

**JUDGMENT SHEET
IN THE LAHORE HIGH COURT, LAHORE.
JUDICIAL DEPARTMENT**

STR No.18 of 2010

**Commissioner of Inland Revenue, Legal Division,
Regional Tax Office, Lahore**

Versus

M/s. Razaqat Marketing, Lahore & another.

J U D G M E N T

Date of hearing: 09.12.2022.

Applicant-department by: M/s. Sh. Nadeem Anwaar, Waqar A. Sheikh, Izharul Haque Sheikh, Sarfraz Ahmad Cheema, Rana Muhammad Mehtab, Ch. M. Imtiaz Elahi, Javed Athar, Syed Zain ul Abidein Bokhari, Malik Abdullah Raza, Kausar Parveen, Sheikh Nadeem Anwaar, Waqas B. Khokhar, Mohsin Ali vice Ch. Muhammad Zafar Iqbal, Noor Muhammad Khan Chandia, Mian Yusuf Umar, Sardar Ali Masood Raza, Shahzad Ahmad Cheema, Ch. Muhammad Yasin Zahid, Sultan Mehmood, Advocates.

Respondent-taxpayers by: M/s. Asad Raza, Syed Saqlain Hussain, Muhammad Fayyaz Mansab, Saood Nasrullah Cheema, Azhar Mukhtar, Muhammad Asghar, Hashim Aslam Butt, Abdul Sattar, Muhammad Naeem Munawar, Imran Rasool, Shah Behram Sukhera, Sumair Saeed Ahmad, M. Hafeez Uppal, Khurram Ahmad Saeed, Mumtaz Hussain Bhutta, Imran Rashid, Mian Abdul Bari Rashid, Advocates.

MUHAMMAD SAJID MEHMOOD SETHI, J.- This consolidated judgment shall decide instant Reference Application, along with connected cases, detailed in the Schedule appended herewith, as common questions of law and facts are involved in these cases.

2. Through instant Reference Application under section 47 of the Sales Tax Act, 1990 (“**the Act of 1990**”), order dated 06.02.2010, passed by learned Appellate Tribunal Inland Revenue, Lahore (“**Appellate Tribunal**”) has been assailed. The common question involved in all these cases is reframed in the following words:-

“Whether Taxation Officer was justified to invoke the provisions of Section 21(3) of the Sales Tax Act, 1990 or Rule 12(5) of the Sales Tax Rules, 2006 for not entertaining invoices, issued prior to blacklisting of supplier, for tax credit or refund, without establishing, through self-speaking order, that the invoices were fake or flying because the claimed tax was not deposited in National Exchequer?”

3. Brief facts of instant Reference Application are that during scrutiny of refund claims of respondent-taxpayer, it was observed that input invoices were issued by the suppliers who had either been declared blacklisted by the concerned authorities, or were non-existent at their given addresses with “registration suspended” status. Show Cause Notices for refund claims for the months of June & August to December, 2003 and February & April, 2004 was issued, which culminated in passing of Order-in-Original dated 11.02.2006, whereby refund claims of respondent-taxpayer were rejected. Feeling aggrieved, respondent-taxpayer assailed said order in appeal before Collector (Appeals), which was dismissed vide order dated 10.10.2006. Feeling dissatisfied, respondent-taxpayer filed second appeal before the Appellate Tribunal, whereby orders passed by fora below were set-aside and appeal was accepted vide order dated 06.02.2010. Hence, instant Reference Application.

4. Learned counsel for the applicant-department submits that the invoices on the basis of which refund was claimed were issued by the suppliers who were either declared blacklisted by the concerned authorities or non-existent at their given addresses with registration suspended status and in some cases purchase invoices were not verified and payment proof was also not provided, therefore, in these circumstances, provisions of section 21(3) of the

Act of 1990 and Rule 12(5) of the Sales Tax Rules, 2006 ("**Rules of 2006**") were rightly invoked.

5. Conversely, learned counsel for respondent-taxpayer strenuously argues that respondent-taxpayer has discharged his statutory obligation of providing the requisite record for the purpose of verification of his claim of input tax. Adds that even otherwise, it has not been shown that supplier units were not operative at the time of transactions in question, therefore, there was no instance to reject the refund claim.

6. Arguments heard. Available record perused.

7. Before dilating upon the proposed question, the applicable provision of Section 21(3) of the Act of 1990 [sub-section (3) was inserted by Finance Act, 2011], analogous to Rule 12(5) of the Rules of 2006 (substituted by Notification No. SRO 589(I)/2012 dated 01.06.2012), is reproduced hereunder for ready reference:-

"During the period of suspension of registration, the invoices issued by such person shall not be entertained for the purposes of sales tax refund or input tax credit, and once such person is blacklisted, the refund or input tax credit claimed against the invoices issued by him, whether prior or after such blacklisting, shall be rejected through a self-speaking appealable order and after affording an opportunity of being heard to such person."

The above provision clarifies that the department is authorized to reject a refund claim based on invoices issued during the period of suspension and after consequent blacklisting, 'whether prior or after such blacklisting', by passing a speaking order after giving the registered person an opportunity of being heard. However, such power is not available to reject the tax credit of all the previously issued invoices on the sole reason that the supplier was blacklisted subsequently.

8. Needless to say that the rights awarded to a registered person by the law to deduct tax, paid against validly issued invoice(s) by

supplier(s), cannot be withheld except in accordance with law. Provisions of Section 21(3) cannot be read in isolation for refusing to entertain the invoice(s) issued prior to blacklisting of the supplier. The Taxation Officer has to establish, through plausible evidence, that the invoices have some nexus with the cause of blacklisting; that the suppliers were conducting business as per law when the invoices were issued; that blacklisting order was passed due to some subsequent defaults; and that order of blacklisting or suspension was reversed being challenged by the supplier subsequently. The reasons or cause of blacklisting is to be correlated with the invoices intended to be rejected for the adjustment of tax credit or its refund.

9. While switching on the provisions of section 21(3), Commissioner or Taxation Officer has to ascertain the fact that the invoices were issued during suspended or blacklisted period. Any subsequent blacklisting of the supplier does not render the transactions invalid or fake on this score unless the same has some nexus with the invoices in dispute. Bottom line is that tax was not paid or deposited against the invoices. To prove these facts burden is upon the revenue, however, this burden can be shifted upon the registered person claiming adjustment or refund of tax, in cases of tax fraud, in accordance with the provisions of section 2(37) of the Act of 1990. Not by confronting, merely, that the supplier was blacklisted subsequently, initial burden, before shifting, is to be discharged by the revenue, as held by learned Division Bench of this Court in case reported as Commissioner Inland Revenue v. Messrs Ali Hassan Metal Works (2018 PTD 108) as well as Hon'ble Apex Court vide order dated 07.03.2019, passed in **Civil Petitions No.432-L, 446-L, 468-L, 469-L, 719-L, 1006-L, 1090-L, 1092-L, 1140-L, 632-L, 447-L and 695-L of 2018**, the operative part of the observations of Hon'ble Supreme Court is reproduced as under:-

“2. The issue agitated by the petitioner in the present petitions is, essentially, whether the input tax adjustments claimed by a person for a period prior to the order of suspension of its sales tax registration (“**registration**”) as a result of blacklisting could be refused or rejected by the Revenue. This matter has, in fact, been resolved by this Court in **Commissioner Inland Revenue, Zone-II, Faisalabad v. M/s Sky Pak Enterprises, Faisalabad (Civil Petition No.682 of 2017)** decided on 18.05.2018, wherein, while interpreting subsection 3 of Section 21 of the Sales Tax Act, 1990, it was held that:

“A bare reading of the said provision shows that it is attracted to transactions that take place after the event of suspension of a supplier of goods under alleged fake invoices. The event of blacklisting follows suspension. Consequently, any transaction while is either prior to or after blacklisting of the supplier is liable to rejection provided that such transaction has taken place after the date of suspension of the supplier. In the present case, the petitioner has not been able to make out before any of the three fora below a cause that the suspension of the alleged issue of fake invoices took place prior to the relevant period July 2008-September, 2009.”

3. Following the *ratio* of the above decision of this Court, the learned counsel for the petitioner was confronted to point out whether the input tax adjustments of the alleged fake invoices were carried out after the order of suspension of Registration of the private respondents was issued; her response was in the negative. This being so, we find the disputed input adjustments to be legally maintainable.”

10. We have looked into the matter and after due consideration we find that Taxation Officer did not establish that said invoices were either fake or flying or the claimed tax was not deposited in the Government Exchequer. It has also not been established that that transactions in question were executed during the period of the alleged suspension / blacklisting of suppliers. We observe that subsequent blacklisting does not disentitle the buyer and cannot be made a tool to deprive him from his lawful and valuable right of input tax accrued in respect of purchases / transactions made when the supplier was a registered and active person. However, if tax against disputed invoices is not found deposited in National Exchequer, the burden can be shifted upon the registered person claiming refund or adjustment of input tax. In these circumstances, applicant-department is under obligation to process the refund claim / adjustment of input tax of respondent-registered person.

11. Learned Appellate Tribunal has given findings of facts that respondent-taxpayer produced relevant documents including invoices, proof of purchases and payments through banks and compliance of Section 73 of the Act of 1990 was also made. It has not been shown that impugned findings of facts are either perverse or contrary to the record.

12. In view of the above, our answer to the proposed question is in negative i.e. against applicant department and in favour of respondent-taxpayer.

The instant Reference Application, along with connected Reference Applications, is decided against the applicant-department.

13. Office shall send a copy of this judgment under seal of the Court to the Appellate Tribunal Inland Revenue as per Section 47 (5) of the Sales Tax Act, 1990.

(Shams Mehmood Mirza)
Judge

(Muhammad Sajid Mehmood Sethi)
Judge

(Shahid Jamil Khan)
Judge

APPROVED FOR REPORTING

Judge

**Mian Farrukh **

SCHEDULE

DETAIL OF CONNECTED CASES MENTIONED IN JUDGMENT DATED 09.12.2022 PASSED IN STR NO.18 OF 2010

| SR. NO. | CASE NUMBERS |
|---------|-----------------------|
| 1. | STR No. 02 of 2012 |
| 2. | STR No. 13 of 2012 |
| 3. | STR No. 14 of 2012 |
| 4. | STR No. 29 of 2012 |
| 5. | STR No. 89 of 2010 |
| 6. | STR No. 33 of 2011 |
| 7. | STR No. 32 of 2011 |
| 8. | STR No. 61 of 2016 |
| 9. | STR No. 177 of 2016 |
| 10. | STR No. 194 of 2011 |
| 11. | STR No. 193 of 2011 |
| 12. | STR No. 209 of 2011 |
| 13. | STR No. 204 of 2011 |
| 14. | STR No. 197 of 2011 |
| 15. | STR No. 195 of 2011 |
| 16. | STR No. 184 of 2011 |
| 17. | STR No. 183 of 2011 |
| 18. | STR No. 182 of 2011 |
| 19. | STR No. 158 of 2011 |
| 20. | STR No. 172 of 2011 |
| 21. | STR No. 192 of 2011 |
| 22. | STR No. 32998 of 2017 |
| 23. | STR No. 117 of 2014 |
| 24. | STR No. 113 of 2012 |
| 25. | STR No. 161 of 2011 |

| SR. NO. | CASE NUMBERS |
|---------|------------------------------------|
| 26. | STR No. 155 of 2011 |
| 27. | STR No. 154 of 2011 |
| 28. | STR No. 162 of 2011 |
| 39. | STR No. 43 of 2011 |
| 30. | STR No. 32973 of 2017 |
| 31. | STR No. 26 of 2012 |
| 32. | STR No. 100 of 2012 |
| 33. | STR No. 156 of 2011 |
| 34. | STR No. 117 of 2013 |
| 35. | STR No. 40 of 2015 |
| 36. | STR No. 39 of 2015 |
| 37. | STR No. 388 of 2015 |
| 38. | STR No. 176 of 2014 |
| 39. | STR No. 06 of 2015 |
| 40. | STR No. 176 of 2011 |
| 41. | C/Tax/STR No. 19408/ 04 of 2017 |
| 42. | STR No. 271 of 2012 |
| 43. | STR No. 09 of 2012 |
| 44. | STR No. 07 of 2012 |
| 45. | STR No. 06 of 2012 |
| 46. | STR No. 171 of 2015 |
| 47. | STR No. 19 of 2015 |
| 48. | STR No. 169 of 2015 |
| 49. | STR No. 130 of 2014 |
| 50. | STR No. 131 of 2014 |

(Shams Mehmood Mirza)
Judge

(Muhammad Sajid Mehmood Sethi)
Judge

(Shahid Jamil Khan)
Judge