

APPELLATE TRIBUNAL INLAND REVENUE
LAHORE BENCH, LAHORE.

STA No.1678/LB/2024
 (Aug-2022 to Dec-2022)

M/s. Raaziq Industrial Enterprises (Pvt) Limited,
 Raaziq Logistic Centre, 15 KM, Multan Road,
 Lahore. [NTN: 3948602-3]

... Appellant

Versus

CIR, CTO, Lahore.

...Respondent

Appellant by : Rana Usman Ghani, Adv.

Respondent by : Ms. Ayesha Ahmad, DR.

Date of hearing : 14.05.2025

Date of order : 02.06.2025

ORDER

MIAN TAUQEER ASLAM (CHAIRMAN):- The titled appeal filed by the registered person is directed against Assessment Order No.01/U-02 dated 03-07-2024, passed by the learned Deputy Commissioner Inland Revenue, Unit-02, Zone-III, CTO, Lahore.

2. Briefly stated, the relevant facts of the instant case that the appellant is a Private Limited Company engaged in the business of recycling of lead by producing lead and lead alloys from processing reclaimed lead. It was observed by the assessing officer that the appellant had claimed inadmissible input tax against supplier M/s. Harbour Metal Pvt. Ltd., NTN. 9902969 who's supplier in supply were non-existent/fake. It was alleged by the assessing officer that the registered person had claimed illegal/fake input tax against this supplier who was involved in mere paper transactions and involved issuing fake/flying invoices without having any backup of input and involved in tax fraud as defined u/s 2(37) of the Sales Tax Act, 1990. The appellant was charged with the violation of provisions of section 2(14), 2(33A), 2(37), 6, 7, 8, 10, 26 and 73 of the Sales Tax Act, 1990. Consequently, the appellant was called upon to show-cause notices u/s 11(2) & 11(3) of the Act alongwith default surcharge u/s 34 and penalty u/s 33(5), 33 (8), 33 (13) & 33(16). Resultantly, adjudication proceedings were culminated in passing of Assessment Order No 01/U-02, dated 03-07-2024 adjudging recovery of sales tax as confronted through show cause notice.

3. Being aggrieved with the assessment order, the registered person filed the instant appeal before this Tribunal on the grounds as set-forth in the memo of appeal.

4. The case was fixed for hearing. The AR of appellant vehemently contended that the assessing officer illegally disallowed input tax adjustment through illegal assessment order. It was submitted that the Commissioner Inland Revenue after verifying status had already issued exemption certificate to the supplier M/s. Harbour Metals (Private) Limited, therefore, the assessing officer has passed illegal order without consulting the relevant record. It was argued by the AR that the input tax was claimed against valid sales tax invoices, issued in accordance with the provisions of sales tax law. It was strongly agitated by the AR that the supplier of appellant was active at the time of transactions and has subsequently been suspended, therefore, allegations of tax fraud u/s 2(37) did not have any basis. The learned AR of the appellant vehemently contended that the assessing officer was not justified in alleging the involvement of the registered person in fraudulent activities or in taking credit for fake and flying invoices, however, no conclusive evidence was brought by him to support such allegations whereas, the registered person had fully complied all the legal requirements. He assailed that the failure of the department to take appropriate action against the supplier undermines the basis for the allegations made against the registered person. He submitted that the registered person had rightly claimed input tax and fully complied with the requirements of Section 73 of the Act. He also agitated that all necessary documents/evidence supporting the legitimate claim were provided at the assessing stage but, the assessing officer failed to consider these documents and intentionally overlooked as the supporting documentation clearly substantiated the appellant entitlement to the input tax credit. To substantiate his point of view, the AR has submitted documents including copies of sales tax invoices, cross cheques, bank receipts, bank statements, dispatch advice & gate passes, copies of dispatch request, bills, material inspection reports, weighing station bills & exemption certificates issued by CIR.

5. It was further explained that the supplier was a private limited company incorporated with SECP and registered with FBR in sales tax under the category of manufacturer and status of manufacturer was never ever be allowed to any registered person without detailed scrutiny and physical verifications of the business premises / manufacturing premises to the satisfaction of the Commissioner Inland Revenue. Further, the

concerned Commissioner Inland Revenue had already granted the party as valid exemption certificate under section 153 of the Income Tax Ordinance, 2001. He contended that not only the supplier was truly existent but also had paid due amounts of taxes to the national ex-chequer as after the payment of advance taxes the exemption certificates u/s 153 of the Ordinance, 2001 was always issued to the private limited company and being the manufacturer of the such goods only. The AR of appellant has raised objection that on one side it was the allegation of the department that the said supplier was fake / non-existent whereas, on the other hand, the department itself had been allowing them registration as manufacturer as well as granting them exemption certificate u/s 153 of the Income Tax Ordinance, 2001.

6. The AR of the appellant has further argued that the department has initiated the proceedings after the lapse of almost two years during which the appellant had always remained compliant taxpayer and also paid huge amounts of duty and taxes in national exchequer and in the meantime and even afterwards the department had already granted the appellant valid exemption certificates which clearly established the *bona-fide* and compliance level of the appellant. The AR argued that in the impugned order the assessing officer has made analysis of the supplier of the appellant and all the allegations have been made against the supplier only whereas, neither any default was created against the appellant nor any willful / deliberate connivance was established. It was stated that while disallowing the input tax adjustment, the assessing officer has relied upon the report received from the RTO Gujranwala after the lapse of two years and the statement of the one of transporter of the appellant which was initiated after the lapse of almost two years and in the same report from RTO Gujranwala neither any basis of involvement of the appellant was found nor any connivance have been established by the assessing officer OIR therefore, the complete proceedings were issued against the appellant without any basis and any serious allegations which are liable to be dropped. The AR further placed reliance on the latest order of the Hon'ble Supreme Court of Pakistan 2025 SCP 38 (The Commissioner Inland Revenue Vs M/s Eagle Cables (Pvt) Ltd, Lahore). Relevant para

"4. In response to these serious allegations, the respondent staunchly defended its position. It asserted that during the relevant taxable activities, the status of both suppliers was verified through the official website of the Federal Board of Revenue. This verification process revealed that the status of the suppliers was active at the time. The respondent argued that its purchases were executed in good faith as it fulfilled the necessary conditions for claiming input tax laid out in sections 7 and 73 of the Act. Therefore, it contended that it could not be held guilty of any contravention under the prevailing provisions of the law.

5. An examination of the records lends credence to the position taken by the respondent. The petitioner has failed to provide any concrete evidence indicating that invoices were issued to the respondent during any period of suspension or blacklisting. It is therefore admitted on all hands that at the time the purchases were made, the suppliers involved were neither blacklisted nor inactive. Furthermore, the payments for these purchases were processed through a legitimate banking channel, adhering to the procedures delineated in section 73 of the Act. It is now well established in legal precedents that if a transaction is conducted while the suppliers are active and duly registered, any invoices issued are not automatically invalidated by a subsequent blacklisting or suspension of those suppliers. Therefore, it follows that the denial of refunds cannot be justified solely based on the later blacklisting of a supplier. In light of this context, according to sub-section (3) of Section 21, all purchasers, including the respondent, who procured goods before the suppliers' registration was suspended or they were blacklisted, and who complied with the conditions outlined in section 73 of the Act, were entitled to claim an adjustment of input tax."



On the other hand, the learned DR and author of the order supported the order passed and contended that the registered person had committed tax fraud by claiming input tax adjustment on the strength of fake/flying invoices.

8. We have considered the rival arguments and perused the relevant available record including judgments of superior courts. It is observed by us that the input tax adjustment was disallowed by the assessing officer for the reasons that the supplier of appellant had issued invoices "without backup" of input tax hence, invoices were "fake/flying". It was the view of learned AR that appellant made purchases from the suppliers after fulfilling all the legal requirements of law. The assertions of learned AR were that the supplier at the relevant time of transactions was active, regular filer and purchases were made through valid invoices and payments of sales tax were also made through banking channel in compliance to section 73 of the Act, 1990. It was further asserted that documentary evidences regarding physical transfer of goods as well as payments made through banking channel were duly furnished before the assessing officer but he failed to consider the same judiciously. After carefully perusing the available record, we have observed that the supplier in question at the relevant time of

showing the supplies to the registered person. In support, the learned AR placed before us copies of the relevant Annexures of the sales tax returns alongwith copies of cheques and bank statements to prove that the compliance of section 73 of the Sales Tax Act, 1990 was duly made and also the amount of tax and payment of goods have also been transferred to the supplier further withholding of income tax has also not been made due to the fact that the supplier was holding proper exemption certificate which is still verifiable from the online portal of FBR i.e. Iris. Whereas, the whole case was built upon the appellant that the supplier issued invoices "without backup" of input tax hence, invoices were "fake/flying". In this situation, in our opinion, the department was required to take actions against the supplier of the supplier and the appellant cannot be held responsible for the default of others. In this case, the department had not acted vigilantly and certain omissions are made by its functionaries, then why should the appellant suffer for the acts or omissions of the others. In this regard, reliance is placed on the judgment of Hon'ble Supreme Court of Pakistan as reported at (2002 SCMR 134) wherein it is categorically observed that a party should not be made to suffer on account of act/omission on the part of the court or other state functionaries. We have observed that in the present case, under the prescribed mechanism of value added tax (VAT), the appellant has made payment of input tax to his supplier and he had no access to confirm that the alleged supplier had made the payments in the Government treasury or not. The appellant receiving taxable supplies was legally obliged to check 'validity and veracity' of the supplying person through electronic verification which was 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, especially when they were filing their monthly sales tax returns and summaries of sales and purchases with the department. The impugned show cause notice does not disclose that the appellant 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 appellant, after verifying the status and genuineness of the supplier from e-portal of FBR and also from the genuineness of the exemption certificates issued by the concerned Commissioner through valid verifiable online system, made the payments of input tax to them and fulfilled all the legal responsibilities on his part and after adopting the method for making payments as is prescribed by the law, has discharged his onus so no responsibilities lies on appellant's shoulders to haunt his suppliers depositing their liabilities in the Government exchequer or not. 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 Federation of Pakistan, etc" reported as (2013 PTD 693). Furthermore, the issue involved in the appeal had also been resolved by Hon'ble Supreme Court of Pakistan in the case of "Commissioner Inland Revenue, Peshawar Vs. M/s Gadoon Textile Mills, Swabi, reported as 2024 SLD 211 [2024 PTCL 44] wherein it was laid down as under:-



"3. The Court queried whether the record shows that the respondent's supplier was de-registered, black listed or suspended in terms of Section 21 of the 'Act' for failure to deposit sales tax due on the supply made by it. The learned counsel has informed that the record is not clear in this respect. We have read the show cause notice which makes no allegation that the respondent's supplier had been de-registered, blacklisted or suspended. In these circumstances, the learned two Court is below have calculated that the petitioner-authority concerned, it has taken the requisite steps for paying the dues on its supply, including the input / sales tax through a crossed cheque. In the absence of any official notification in the display by the petitioner's software, the respondent had no means of establishing whether the sales tax on the supply made by the supplier and recovered from the respondent had been deposited or not. The record is also silent in this respect. Consequently, the petitioner did not have a cause of action against the respondent and its remedy lay against the supplier of the goods. The petitioner-authority appears to have taken no action against the defaulting supplier. For all these reasons, we consider that to burden the respondent buyer of goods with the liability of its supplier which is also registered person actually tantamount to transferring the responsibility of recovery of sales tax from the petitioner which has failed to take any action, to the respondent. The respondent cannot be punished for the neglect of the petitioner-authority.

"emphasis supplied"

9. The assessing officer while framing charges against the appellant did not discuss the merits of the case and no comment was made on the record provided by the registered person i.e. exemptions certificates, copies of sales tax invoices, copies of gate passes, copies of freight and weighing stations bill and relevant Annexures of the returns, cheques and bank statements. The assessing officer have only taken the statement of

the two truck owners who have made statement however, when verified it found that these statements were not correct as the appellant during the hearing have provided written affidavits of the alleged two persons. Further these sole statements even cannot be made basis for the proof of involvement of any tax fraud of the appellant in the presence of many other documents and legal compliances made by the appellant which corroborates the stance and genuineness of the appellant. The assessing officer heavily relied upon the supplier's suppliers and their activities. In the above judgment, the Hon'ble Supreme Court has resolved this matter by holding that appellant/purchaser is not responsible for default, if any, committed by the suppliers. In the present case, the appellant has brought on record sufficient documentary evidences to rebut the allegations of the department and has sufficiently discharged the onus placed on him for establishing that genuine transactions have been made and goods were actually purchased and the respondent has not been able to rebut any of the documentary evidence provided including gate passes, weigh slips invoices and most importantly compliance of section 73 of the Act and also the exemption certificates and manufacturing status issued to the suppliers. The learned AR has also shown us the sales tax returns of its suppliers "Harbour Metals Pvt Ltd" and perusal of the annexure-C of the STR of the supplier revealed that among other parties including the appellant, supplies were also made to the "Ministry of defense Production" holding FTN 9010700 i.e. an executive ministry of the federal government.

This simple but substantial fact is very important since the entire allegation of the department is that the said supplier was dummy / non-existent however, that same supplier had supplied goods to the Ministry of Defence Production (MoDP) which is only possible after adequate scrutiny and registration with MoDP as a supplier and then going through the process of tendering etc. thereby effectively establishing that the supplier was existent, actually present and supplying goods. Perusal of the record, produced before this Tribunal, reveals that the appellant had actually purchased the goods from the respective supplier when it was active on the web-portal of FBR as without this input tax adjustment cannot be made and the goods were also physically transferred to its business premises which have duly been verified in the lights of the documents produced

payments of the consideration of goods including amounts of sales tax charged thereupon were also made to respective suppliers in accordance with the provisions of section 73 of the Act, as evident from the bank statement (Faysal Bank) and the copies of cheques. All the necessary conditions including verifying genuineness of supplier from e-portal of FBR its operative status, sufficient conditions of making payments through banking channel to ascertain the veracity of such transactions and physical transfer of goods were also complied with the appellant, therefore, the appellant is legally entitled to claim the input tax adjustment.

10. After taking into consideration all aspects of the case, we find that on the one side the department has alleged that the supplier is non-existent/dummy whereas on the other hand the department itself had allowed registration as manufacturer as well as granting them exemption certificates u/s 153 of the Income Tax Ordinance, 2001 which is issued to the business having premises/manufacturing activities. In the present case, the appellant has brought on record sufficient documentary evidence to rebut the allegations of the department and has sufficiently discharged the onus placed on him for establishing that goods were actually purchased and the department has not been able to rebut any of the documentary evidence provided including gate passes, weigh slips, invoices and most importantly payments u/s 73 made to the suppliers which the assessing officer has admitted to being made but did not accept nor any plausible explanation has been provided with regards to the contradictory nature of the departmental stance i.e. verification of premises at the time of registration as a manufacturer, granting of exemption u/s 153 of the Income Tax Ordinance, 2001 and the allegation of non-existence of suppliers. For what has been discussed and in light of the sufficient evidences before us comprising of weigh slips, gate passes, sale tax invoices, payments via banking channel u/s 73 of the Act, goods transportation documents in respect of physical transfer of goods coupled with issuance of prescribed invoice for rendering of transportation services and the fact that the alleged supplier was also making supplies to the MoDP, we have no hesitation to conclude the said supplier was existent and engaged in supplies of goods and the appellant had actually purchased goods from them and the same were physically transported to

premises of the appellant. The appellant was entitled to claim the input tax in respect of the said supplier.

11. We further add here that the supplier of the registered person was active at the time of issuance of invoices and filed respective sales tax returns showing sales to the appellant. The issue of subsequent suspension / blacklisting has already been settled in favour of the appellant/registered person in various cases not only by the ATIR but also at the level of High Court. The Hon'ble Lahore High Court in the case law cited as PTCL 2019 CL 78 has already decided the issue in favour of the taxpayer by holding as under:-

"Subsequent blacklisting does not invalidate the invoices issued at the time which the supplier was active and duly registered. Invoices issued by the supplier could not be held invalidated on the ground that the supplier was blacklisted."

In another judgment reported as PTCL 2019 CL 97 the Hon'able



High Court held as under:-

"The invoices which were issued when the suppliers were not blacklisted or these invoices which had no nexus with the blacklisting order, cannot be held inadmissible for input tax adjustment."

This issue has also been resolved by Hon'ble Supreme Court of Pakistan in case of "Commissioner Inland Revenue, Faisalabad vs. M/s. Sky Pak Enterprises, Faisalabad" vide CP No. 682 of 2017 dated 18-05-2018 wherein it was laid down as under:-

"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".

12. For the foregoing reasons and keeping in view the ratio decided in the above referred judgments, we hold that there was no lawful justification for the assessing officer to disallow input tax adjustment. Accordingly, the order of the assessing officer on the issue is cancelled / annulled.

13. The appeal succeeds in the above manner.

sd -
(MIAN TAUQEEER ASLAM)
CHAIRMAN

sd -
(MUHAMMAD JAMIL BHATTI)
MEMBER