

[Supreme Court of Pakistan]

Present: Umar Ata Bandial, Sajjad Ali Shah and Syed Mansoor Ali Shah, JJ**COMMISSIONER OF INLAND REVENUE---Petitioner****Versus****Messrs MUGHAL BOARD INDUSTRY---Respondent**

Civil Petition No. 1026-L of 2019, decided on 2nd November, 2021.

(Against the order dated 13.02.2019 of the Lahore High Court, Lahore passed in STR No. 8160 of 2019)

(a) Sales Tax Act (VII of 1990)---

---S. 34A---Illegally adjusted input tax---Default surcharge and penalties---Amnesty Scheme---Purpose and scope---Purpose of an amnesty scheme is to incentivize payment and collection of stuck-up revenue--
-Taxpayer who had made voluntary payment before the cut-off date under the amnesty scheme can avail the amnesty scheme.

Plain reading of SRO No. 606(I)/2012 dated 01.06.2012 ("amnesty notification") shows that if the default surcharge and penalties payable by a registered person are outstanding on account of illegally adjusted input tax, the registered person may avail exemption against default surcharge and penalties provided the whole of the principal amount of illegally adjusted input tax is deposited by 25th June, 2012 and any case or complaint filed by the registered person against the department is withdrawn by the said date.

The contention of the (tax) department that the amount of sales tax must be outstanding against the person on 01-06-2012 for the amnesty notification to apply, is not convincing. The spirit and object of the amnesty notification is to incentivize quick recovery of stuck up tax revenue, hence the notification offers that if only the principal amount of illegally adjusted sales tax is deposited by 25th June, 2012 the default surcharge and penalties stand exempted. The importance is of the cut-off date i.e. 25th June, 2012. There appears to be no bar in the notification and no possible disadvantage caused to the department, if the principal amount of sales tax is deposited prior to the date of the amnesty notification. In fact it is advantageous for the department as the stuck up tax revenue has been voluntarily deposited by the taxpayer, which is in line with the scheme of the amnesty being offered by the department. The other condition is the withdrawal of any case or complaint filed by the registered person against the department in this regard. Admittedly, the respondent (tax payer) deposited the principal amount of sales tax before 01-06-2012, and the respondent has not filed any case, etc against the department except the present case, hence the respondent successfully meets the conditions of the amnesty notification and is, therefore, entitled to the benefit of it.

The main purpose of the amnesty scheme is to incentivize payment and collection of stuck up tax revenue and, therefore, what matters is the payment by or before the cut-off date. The government must actually welcome any voluntary payment made by a taxpayer before the cut-off date. In any case, extension of the benefit of the amnesty notification to the tax payer ensures level playing field, creasing out any trace of discrimination amongst taxpayers who have already paid the principal amount of tax before the cut-off date.

There was no justification to deny the benefit of the amnesty notification to the respondent taxpayer. Petition for leave to appeal was dismissed.

(b) Sales tax---

---Amnesty scheme--- Notification--- Interpretation--- Amnesty notification being beneficial subordinate legislation must be viewed liberally in favour of the taxpayer in order to achieve the solitary fiscal objective of quick recovery of stuck up tax revenue.

Ms. Kausar Parveen, Advocate Supreme Court (video-link from Lahore) along with Naeem Hassan, Secy (Lit.) FBR for Petitioner.

Nemo for Respondent.

Date of hearing: 2nd November, 2021.

ORDER

SYED MANSOOR ALI SHAH, J.---The sole question that has come up for our determination is whether the benefit of SRO 606(I)/2012 dated 01.06.2012 ("amnesty notification"), reproduced hereunder, can be extended to the respondent. The amnesty scheme under the notification grants exemption of the whole amount of default surcharge and penalties to a person against whom an amount of sales tax is outstanding on account of illegally adjusted input tax provided that two conditions are met: (i) the whole principal amount of illegally adjusted sales tax is paid by the 25th June, 2012 and (ii) any case, complaint or proceedings filed by the registered person before any court of law, etc. are withdrawn by the said date. Once the above conditions are complied with, all criminal proceedings lodged against the taxpayer by the department shall also abate.

GOVERNMENT OF PAKISTAN MINISTRY OF FINANCE, ECONOMIC AFFAIRS, STATISTICS AND REVENUE (REVENUE DIVISION)

Islamabad, the 1st June, 2012.

NOTIFICATION**(SALES TAX)**

S.R.O. 606(I)/2012.---In exercise of the powers conferred by section 34A of the Sales Tax Act, 1990, the Federal Government, in supersession of its Notification No. S.R.O. 563(I)/2012, dated 25th May, 2012, is pleased to exempt the whole amount of default surcharge and penalties payable by a person against whom an amount of sales tax is outstanding on account of illegally adjusted input tax, subject to the following conditions:-

- (i) whole of the principal amount of illegally adjusted sales tax is paid by the 25th June, 2012, and
 - (ii) any case, complaint or proceedings filed by the registered person before any court of law, Federal Tax Ombudsman or any other authority is withdrawn by the said date.
2. Any criminal proceedings lodged by the department shall abate from the date of complying with the above conditions by the registered person.

[C.No.4(2 1)ITP/2011-Pt.II]

Sd/-

(Shahid Hussain Asad)

Additional Secretary

2. In the present case, the respondent registered person deposited the whole of the principal amount of sales tax payable in lieu of illegally adjusted input tax much before 01.06.2012 (date of the amnesty notification). Proceedings were initiated against the respondent for the recovery of default surcharge and penalties by issuance of show cause notice dated 20.11.2012. The respondent sought the benefit of the amnesty notification, which came subsequent to the deposit of the principal amount of sales tax by the petitioner. However, the benefit of the amnesty notification was denied to the petitioner by the department on the ground that it was only applicable to registered persons against whom the principal amount of sale tax was outstanding on 01.06.2012. The High Court while hearing the sales tax reference filed by the respondent disagreed with the view of the department and allowed the benefit of the amnesty notification to the respondent. The order of the High Court has been assailed by the department before us.

3. We have heard the learned counsel for the petitioner-department and have carefully gone through the amnesty notification. Plain reading of the amnesty notification shows that if the default surcharge and penalties payable by a registered person are outstanding on account of illegally adjusted input tax, the registered person may avail exemption against default surcharge and penalties provided the whole of the principal amount of illegally adjusted input tax is deposited by 25th June, 2012 and any case or complaint filed by the registered person against the department is withdrawn by the said date. The contention of the department that the amount of sales tax must be outstanding against the person on 01.06.2012 for the amnesty notification to apply, is not convincing. The spirit and object of the amnesty notification is to incentivize quick recovery of stuck up tax revenue, hence the notification offers that if only the principal amount of illegally adjusted sales tax is deposited by 25th June, 2012 the default surcharge and penalties

stand exempted. The importance is of the cut-off date i.e. 25th June, 2012. There appears to be no bar in the notification and no possible disadvantage caused to the department, if the principal amount of sales tax is deposited prior to the date of the amnesty notification. In fact it is advantageous for the department as the stuck up tax revenue has been voluntarily deposited by the taxpayer, which is in line with the scheme of the amnesty being offered by the department. The other condition is the withdrawal of any case or complaint filed by the registered person against the department in this regard. Admittedly, the respondent deposited the principal amount of sales tax before 01.06.2012, and the respondent has not filed any case, etc against the petitioner department except the instant case, hence the respondent successfully meets the conditions of the amnesty notification and is, therefore, entitled to the benefit of it.

4. Any other interpretation of the amnesty notification will lead to anomalous results. For example, if the respondent had not deposited the principal amount of sales tax before 01.06.2012, he would still be entitled to avail the amnesty notification if he were to deposit the principal amount of sales tax by 25th June, 2012 along with the withdrawal of any case or complaint filed by the registered person by the said date. In such a situation the taxpayer is encouraged to withhold the principal amount of sales tax, draw benefit on it till the last date and then deposit the same to avail the benefits of the amnesty notification. However, on the other hand, in the present case, the petitioner, in the absence of an amnesty notification, voluntarily deposited the whole of the principal amount of illegally adjusted input tax before the cut-off date i.e., 25th June, 2012, while the amnesty scheme was notified subsequently. Denial of relief to such a registered person would imply that the notification penalizes voluntary deposit of tax by a taxpayer and adds premium on an intentional withholding of the tax and delay in payment of tax. This cannot be the purpose of any taxing law or of any amnesty scheme under such law. The main purpose of the amnesty scheme is to incentivize payment and collection of stuck up tax revenue and, therefore, what matters is the payment by or before the cut-off date. The government must actually welcome any voluntary payment made by a taxpayer before the cut-off date. In any case, extension of the benefit of the amnesty notification to the petitioner ensures level playing field, creasing out any trace of discrimination amongst taxpayers who have already paid the principal amount of tax before the cut-off date. Additionally, amnesty notification being beneficial subordinate legislation must be viewed liberally in favour of the taxpayer in order to achieve the solitary fiscal objective of quick recovery of stuck up tax revenue.

5. We, for the above reasons see no justification to deny the benefit of the amnesty notification to the respondent taxpayer. This petition, therefore, fails and is accordingly dismissed.

MWA/C-2/SC Petition dismissed.