JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P.No.259/2018
Al-Mubarak CNG
Versus
Chief Commissioner Inland Revenue, Regional Tax Office, Islamabad and another

Date of Hearing: 22.01.2019
Petitioner by: Mr. Riffat Hussain Malik, Advocate.
Respondents by: Mr. Umer Aslam Khan, Advocate.

MIANGUL HASSAN AURANGZEB, J:- Through the instant writ petition, the petitioner, Al-Mubarak CNG, seeks a direction to the respondents to refund an amount of Rs.3,442,504/- to the petitioner for the tax years 2013-14.

2. Learned counsel for the petitioner submitted that respondent No.2 accepted the petitioner's claim for the refund of the said amount; that the refund voucher was returned by the State Bank of Pakistan; that the petitioner repeated notices for the release of the said amount but to no avail; that this caused the petitioner to approach the Federal Tax Ombudsman, who directed the respondents to release the said amount within a period of 21-days; that thereafter, the position taken by the respondents was that a claim for the release of an amount by a CNG Station cannot be entertained on account of a clarification issued by the Federal Board of Revenue ("F.B.R."); and that the refusal on the part of the respondents to release the admitted portion of the amount is illegal and unlawful. Learned counsel for the petitioner prayed for the writ petition to be allowed in terms of the relief sought therein.

3. On the other hand, learned counsel for the respondents submitted that in the light of Section 234A(4) of the Income Tax Ordinance, 2001 ("the 2001 Ordinance"), a CNG Station is not entitled to claim adjustment of withholding tax collected or deducted under any other head/provision of the said Ordinance even in instances where tax collected/deducted under any other head is in excess of the final tax liability discharged by the taxpayer; that Section 234A was inserted in the 2001 Ordinance

through Finance Act, 2007; that Section 234A(4) of the said Ordinance provided that the taxpayers shall not be entitled to claim any adjustment of withholding tax collected or deducted under any other head during a tax year; that the said sub-section was omitted through the Finance Act, 2017; that since the petitioner's claim pertains to the tax year 2013-2014, the same has to be determined in the light of Section 234A(4) of the 2001 Ordinance as it stood during the said tax years; and that the petitioner's claim for refund is not entertainable not just on the basis of the clarification issued by the F.B.R. through letter dated 23.02.2017 but on the basis of the law as it stood during the tax years 2013 and 2014. Learned counsel for the respondents prayed for the writ petition to be dismissed.

4. I have heard the contentions of the learned counsel for the contesting parties and have perused the record with their able assistance.

5. The petitioner had claimed a refund from the respondents for an amount of Rs.3,442,504/- for the tax years 2013 and 2014. Respondent No.2 processed the said claim and issued refund voucher in the petitioner's favour. The refund voucher was not honoured by the State Bank of Pakistan. Aggrieved by this, the petitioner approached the Federal Tax Ombudsman which directed the respondents to settle the petitioner's claim for refund within a period of twenty one days. Thereafter, the respondents issued a notice under Section 170(4) of the 2001 Ordinance to the petitioner. In the meanwhile, the F.B.R. issued a clarification to the effect that *"in light of sub-section (4) of section 234A of the Ordinance, a CNG station is not entitled to claim adjustment of withholding tax collected or deducted under any other head/provision of this Ordinance even in instances where tax collected/deducted under any other head is in excess of the final tax liability discharged by the taxpayer under section 234A of the Ordinance"*.

6. The petitioner's grievance is that its claim for refund cannot be denied on the basis of a clarification issued by the F.B.R. Now Section 234A was inserted in the 2001 Ordinance through the Finance Act, 2007. Section 234A(1) of the said Ordinance provides

inter-alia **that there shall be collected advance tax at a specified rate on the amount of the gas bill of a Compressed Natural Gas Station. Section 234A(3) of the said Ordinance provided that the tax collected under this Section shall be the final tax on the income of CNG Station arising from the consumption of gas referred to in Section 234A(1).**

7. Section 234A(4) of said Ordinance provided that the taxpayers shall not be entitled to claim any adjustment of withholding tax collected or deducted under any other head during the tax year. The petitioner's claim for refund pertains to the years 2013 and 2014. Since Section 234A(4) of the 2001 Ordinance was not omitted until the enactment of the Finance Act, 2017, it fully applied to the petitioner for the said tax years. The petitioner's claim for refund is not just being resisted on the basis of clarification issued by the F.B.R. but also the position of law as it stood during the tax years with respect to which the petitioner was claiming a refund.

8. In view of the above, I do not find any merit in this petition, which is accordingly dismissed with no order as to costs. In the event the petitioner agitates its grievance before the respondents, they shall decide the same strictly in accordance with the law and uninfluenced by the observations made herein above.

(MIANGUL HASSAN AURANGZEB)
JUDGE

ANNOUNCED IN AN OPEN COURT ON _____, 2019.

(JUDGE)

Qamar Khan*

Uploaded By : Engr. Umer Rasheed Dar