


APPELLATE TRIBUNAL INLAND REVENUE, LAHORE BENCH**STA No.609/LB/2017****M/s. Man Diesel & Turbo Pakistan (Pvt),
Limited, Lahore.****...Appellant****V e r s u s****The CIR, RTO, Lahore.****...Respondent****Appellant by : Mr. Tipu Sultan, ITP.****Respondent by : None.****Date of Hearing : 03.08.2017****Date of Order : 22.08.2017****ORDER**

The titled appeal has been preferred on behalf of registered person calling in question the impugned order No.2591/J dated 12.05.2017, passed by the Commissioner Inland Revenue, Zone-II, Corporate RTO, Lahore, whereby he provisionally suspended the sales tax registration of the registered person.

2. Briefly stated, the relevant facts are that the registration of the instant registered person was suspended by the Department vide order dated 12.05.2017, for the reason that the registered person has declared taxable as well as exempt supplies simultaneously in sales tax monthly returns but allegedly it had failed to apportion its input tax related to exempt supplies as no exempt purchases/imports are declared in sales tax returns. Accordingly, it was concluded by the department that the registered person is involved in claiming inadmissible input tax and huge revenue is involved, therefore, in exercise of powers conferred u/s 21(2) of the Sales Tax Act, 1990 read with Rule-12 of the Sales Tax Rules, 2006, the registration of the registered person was suspended.

3. It is the submission of the learned AR that suspension of sales tax registration of the registered person is illegal, unjustified and against the norms of justice. It is contended by the learned AR that the whole case of suspension was made out on supposition and presumption that apportionment of input tax related to exempt




supplies was not made by the registered person and it is established that no exempt purchases/ imports are declared in the sales tax returns. It is submitted by the learned AR that no exempt supply are made in Pakistan and for the period under consideration a separate proceedings on almost on same allegations has already been initiated by the department u/s 11(2) and order dated 09.02.2017 was passed by the assessing officer. The registered person assailed the said assessment order before the CIR(A) who vide impugned order dated 29.03.2017 annulled the said assessment order but directed the assessing authority to initiate fresh proceedings. It is submitted by the learned AR that the registered person assailed the order of the learned CIR(A) before the Tribunal wherein the matter is still pending and stay of initiation of re-assessment proceedings was allowed vide order dated 10.04.2017. It is contended by the learned AR that the department instead of waiting final outcome of appeal pending before the Tribunal has started taking coercive measures against the registered person and registration of the registered person was hastily suspended on almost same set of allegations which are already subjudice matter before the learned Tribunal. It is also submitted by the learned AR that the department on passing the suspension order on 12.05.2017 has hurriedly and hastily started proceeding to blacklist the registered person through a show cause notice issued on 16.05.2017 which shows pre-determined mind of the department. Copy of the show cause notice was submitted by the AR which is placed on record.

4. It is also contended by the learned AR that section 21(2) only warrants proceedings for suspension/blacklisting where any tax evasion or issuance of fake invoices and fraud has been observed whereas in the instant case suspension/blacklisting was made on the presumption of non apportionment of input tax related to exempt supplies which was also even against the facts of the case.

5. On the contrary, the learned DR supported the suspension order and contended that the assessing authority has rightly initiated the proceedings to blacklist the registered person as the

taxpayer has committed tax fraud by way of non-apportionment of input tax related to exempt supplies and no exempt purchases/imports are declared in sales tax returns.



5. We have heard the arguments of the learned representatives of both sides and have perused the order passed by the authority below. After due consideration, we find that as per provision of section 21(2) of the Sales Tax Act, 1990 proceedings for blacklisting/suspension of a registered person can be initiated where any tax evasion or issuance of fake invoices and fraud has been observed whereas in the instant case no such allegation is against the registered person is established by department. It seems that whole case is made out on mere presumption as alleged non-apportionment of input tax related to exempt supplies obviously is not strictly falls under the definition of 'tax fraud' as contained u/s 2(37) of the Act. Merely, only saying that the registered person is involved in claiming of inadmissible input tax since July 2015 and huge revenue is involved, the department cannot say that the registered person is involved in any kind of tax fraud and the provisions of section 21(2) attracted in the case.

6. Furthermore, if, for the sake of argument, it is presumed that the registered person has violated the provisions of law, we are of the view that the provisions of section 21(2) cannot be invoked in the present case as better and legal course available with the department to initiate proceedings u/s 11 (2) of the Act. Perusal of record reveals that the department has already completed proceedings u/s 11(2) of the Act covering the same period as involved in the present appeal and on almost on the same sets of allegations. Against the said proceedings initiated u/s 11(2), the registered person preferred appeal before the Tribunal which is still pending adjudication. Therefore, we are of the opinion that the department is not permitted to initiate proceedings under the garb of section 21(2) of the Act.

7. In view of the above observations made by us, we are inclined to hold that the department was not justified to declare the

registration of registered person as "suspended", therefore, impugned order dated 12.05.2015, passed by the CIR, Zone-II, Corporate RTO, Lahore, is hereby vacated by way of restoration of the registration of the registered person. This will also nullify the consequential proceedings intended to be initiated for blacklisting through issuance of show cause notice dated 16.05.2017.

8. Appeal of the registered person succeeds in the above manner.

sd -
(QAMAR-UL-HAQ BHATTI)
Judicial Member

sd -
(MASOOD AKHTAR SHAHEEDI)
Accountant Member