

**APPELLATE TRIBUNAL INLAND REVENUE, LAHORE BENCH,
LAHORE.**

STA No.1195/LB/2013

M/s. Scientific Research Store, Lahore. ...Appellant

Versus

The CIR, Zone-VI, RTO, Lahore. ...Respondent

Appellant by: Mr. Attiq-ur-Rehman, Advocate

Respondent by: Dr. Qurratulain, DR

Date of Hearing: 28.01.2014

Date of Order: 28.01.2014

ORDER

The above titled appeal at the instance of the registered person has been directed against the blacklisting order dated 29.11.2013 recorded by CIR, Zone-VI, RTO, Lahore.

2. Learned counsel appearing on behalf of the registered person has termed the blacklisting proceedings concluded by the learned CIR to be illegal. He has elaborated his view point by maintaining that section 21(2) of the Sale Tax Act (hereinafter referred to as Act) clearly provides that if the registered person is found to have issued fake invoices or tax fraud, then his registration can be suspended or he may be blacklisted in accordance with procedure prescribed by the Board by notification in the official Gazette. He has apprised the court that there is no such notification in the Gazette issued by the Board, which is also contrary to the ratio settled in a reported of Honourable Supreme Court of Pakistan cited as PLD 2011 (S.C) 374. While arguing on merits of the case, he has submitted that blacklisting of the registered person has been ordered on account of input tax adjustment amounting to Rs.1,281,140/- for period July 2007 to August 2012, on the basis of fake sales tax invoices, without giving month-wise or year-wise break-up. So much so, even parties name have not been provided in show cause notice, which is contrary to the ratio settled in reported

judgments cited as PLD 2013 (L.H.C) 634 and PLD 2013 (L.H.C) 693.

3. On the other hand, learned DR appearing on behalf of the department has fully supported the impugned order simply by reiterating the basis evolved therein.

4. Arguments heard and record perused. We find ourselves in agreement with the line of arguments adopted by learned counsel. Section 21 provides the procedure for Deregistration, suspension and blacklisting of registration, which is reproduced for convenience:-

Section 21

- (1) The Board or any officer, authorized in this behalf, may subject to the rules, de-register a registered person or such class of registered persons not required to be registered under this Act.
- (2) Notwithstanding anything contained in this Act, in cases where the [Commissioner] is satisfied that a registered person is found to have issued fake invoices or has [otherwise] committed tax fraud, he may blacklist such person or suspend his registration in accordance with such procedure as the Board may, by notification in the official Gazette, prescribe.] (underlining is for emphasis)

--- From bare perusal above it transpires that in case of blacklisting, suspension etc, the Board will prescribe the procedure which will be notified in the official Gazette. The Board through SRO No.555/1/2006 dated 02.06.2012 prescribed the procedure for deregistration, suspension and blacklisting, which was also notified in the official Gazette. The said SRO was rescinded in June 2012. Subsequently, the Board issued STGO No.35/2012 dated 30.06.2012 to regulate the procedure of suspension, blacklisting etc., which has not been notified in the official Gazette as provided in section 21(2) of the Act. Therefore, is not stricto sensu in accordance with law.

5. The Apex Court of the country in such like situation in a reported judgment cited as PLD 2011 S.C. 374 has held as under:-

"The case of Muhammad Suleman and others v. Abdul Ghani PLD 1978 SC 190 throws sufficient light on the legal position that issuance of a Notification is not of any significance or legal importance till it is published in an official Gazette. According to section 2(41) of the General Clauses Act, 1956 a 'Notification' means a Notification published under proper authority in an official Gazette. In this view of the matter before its publication in the official Gazette the Notification relevant to the present appeals could not even be lawfully termed as a Notification. In these peculiar circumstances of this case we have not been able to take any legitimate exception to the declaration made by the learned Division Bench of the High Court of Sindh, Karachi that notices of demand issued against the respondents on 02.10.1998 were without lawful authority and of no legal effect. These appeals are, therefore, dismissed with no order as to costs."

--- The perusal of above clearly transpires that until or unless notification is not notified in the official Gazette, the same is not in accordance with law, having no legal effect. It will not be out of place to mention here that section 55 of the Act empowers the Board to issue general order, instruction or directions in case of any difficulty arising in giving effect to the provision of this Act or Rules or Notification.

6. Furthermore, according to the departmental authorities, invoices of Rs.14,22,024/- have been declared to be fake as per show cause notice without giving month-wise or year-wise break-up as well as parties name by whom such invoices had been received by the registered person, which renders the show cause notice to be legally infirmed. Moreover, the case laws relied before us by learned counsel are on all fours of the case in hand. In view of the foregoing discussion, we find no other alternative but to vacate the blacklisting order dated 29.11.2013. Appeal is accepted accordingly

(NAZIK AHMAD)
Judicial Member

(FIZA MUZAFFAR)
Accountant Member

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