

IN THE APPELLATE TRIBUNAL INLAND REVENUE LAHORE  
BENCH, LAHORE

STA No.220/LB/2013

M/s Abdullah Plastic, Faisalabad, .... Appellant

Versus

The C.I.R Zone-II, RTO, Faisalabad ...Respondent

Appellant by : Mr. M Imran Rashid, Advocate.  
Respondent by : Ch. Jaffar Nawaz, D.R.

Date of Hearing : 20-06-2014  
Date of Order : 20-06-2014

ORDER

The titled appeal preferred at the instance of registered person is directed against the order bearing CIR/Z-II/ST/3532 dated 22-02-2013 passed by the learned Commissioner Inland Revenue, Zone-II, Faisalabad.

2. Briefly stated, the facts of the case are that during scrutiny of record for the tax period 08/2008 to 07/2011 it was observed that the appellant had claimed input tax adjustment to the tune of Rs.1,71,39,202/- against the invoices issued by suspended/blacklisted and non-filer units. It was also observed that no physical goods were ever transferred from the business premises to the supplier's business territory as envisaged u/s 2(14). It was, therefore, alleged that the appellant had apparently made a tax fraud, therefore, registration of the appellant was suspended vide order dated 31.08.2012. Thereafter, a show cause notice was issued on 07.09.2012, and as per the impugned order, since no reply was furnished the learned Commissioner in exercise of the powers conferred u/s 21(2) of the Sales Tax Act, 1990 read with Rule 12 of the Sales Tax Rules, 2006 notified vide SRO 555(1)2006 dated 05.06.2006 and Clause 'N' of STGO No.3 of 2004 dated 12.06.2004 as amended vide STGO No.35/2012 dated 30.06.2012 the appellant was declared blacklisted vide order dated 22.02.2013. Hence, this appeal.

3. The learned A.R has, vehemently, assailed the impugned order as unjustified and arbitrary. He contended that the registration of the appellant was suspended by the learned Commissioner on the basis of

presumptions without bringing any material evidence on record. He pointed out that the FBR vide STGO No.35 dated 30-06-2012 had issued a uniform policy for suspension and blacklisting of the registered persons u/s 21(2) of the Sales Tax Act, 1990. As per the said STGO, "if the Commissioner is satisfied that a registered person has issued fake invoices, evaded tax or committed tax fraud, suspension of registration shall be made through a written order. Thereafter, the Commissioner shall issue a show cause notice within seven days of the issuance of such order". It is pertinent to mention here that in the instant case the show cause notice was issued after lapse of seven days which is clearly violative of Clause (37) of the STGO No.35/2012 dated 30-06-2012. Further submitted that according to Clause (38) of the said STGO, in case the show cause notice is not issued within (07) days of the order of suspension, the order of suspension shall become void ab-initio. Moreover, the suspension order as well as the show cause notice has already been set-aside by the Tribunal vide order bearing STA No.1006/LB/2012 dated 19.02.2013. It is well settled principle of law that where the basic order is void ab-initio, illegal and without lawful authority, the whole superstructure built thereon would have to fall on the ground automatically and whatsoever proceedings in its consequences in the shape of any show cause notice and blacklisting order thereon shall also become void, illegal, unlawful and without jurisdiction. According to the learned A.R that since the Tribunal has set aside the order of suspension the learned Commissioner was not justified to pass the impugned order. He pleaded that, if required, fresh proceedings could be initiated. Since the impugned order was passed in accordance with the earlier show cause notice, the whole proceedings are void ab-initio and illegal.

4. Similarly, the learned A.R also pleaded that after giving an opportunity of hearing, the order of blacklisting should have been passed within 90 days of the issuance of the show cause notice. He drew our attention towards Para (10) of the order which reads as "**Board has already granted condo-nation/extension of time limit in the instant case upto 24-02-2013 vide Board letter C. No2(158)ex/2012 dated 27-11-2012 for decision of the show cause notice C. No.06 dated 07-09-2012**". It may be mentioned here that a bare perusal of the suspension and black-listing orders show that these are non-speaking orders, and are not in conformity to the mandatory requirements of section 24A of the

General Clauses Act, 1897. Any order which does not contain substantial reason and does show that it is passed on objective consideration shall always be treated as illegal void functionary. There is no room for such illegal, void and arbitrary orders in any system of law. The reasons being that if any authority, Court or Tribunal gives a finding of fact which is not based on the material available on record, is illegal, arbitrary without discussing and considering the material available on record it becomes perverse, and a perverse finding of fact which is violative of the established principle of the appreciation of evidence on record is not sustainable in law. The principle that every judicial or quasi-judicial finding should be based on reasons containing the justification for the finding in the order, itself is an established principle of dispensation of justice. The learned Commissioner's order being violation of the basic principle of the good governance and mandatory requirements of Section 24A of General Clauses Act are not only illegal and void but also not sustainable in the eyes of law.

5. Even on merit, the learned A.R submitted that the appellant was declared blacklisted due to the reason that he had made purchases/supplies and the suspended/blacklisted units. In this behalf the learned A.R stated that at the material time all the suppliers were active and alive and they were regularly submitting their sales tax returns. The learned A.R has referred to the following for our perusal:-

Sr. No.	Supplier Name	Sales Tax Registration Number	Date on which the Units declared as Suspended/Blacklisted	Tax Period
1.	M/s Fine Star International	17-00-3800-015-55	Blacklisted w.e.f. 03-07-2013	09/2008 & 11/2008
2.	M/s Techno Pak International	17-50-2100-041-91	Blacklisted w.e.f. 03-06-2013	11/2008
3.	M/s Prime Work Traders	17-50-3800-050-19	Blacklisted w.e.f. 03-07-2013	04/2009
4.	M/s Orthodox & Company	17-00-9999-760-46	Blacklisted w.e.f. 03-07-2013	03/2011, 05/2011 to 07/2011
5.	M/s Hamid Corporation	17-00-9999-898-28	Blacklisted w.e.f. 03-07-2013	08/2008, 09/2008, 12/2008, 01/2009, 07/2009 to 09/2009, 05/2010, 07/2010, 08/2010, 10/2010.

				11/2010, 12/2010, 02/2011
6.	M/s Ailiyah Enterprises	17-50-6200-098-91	Blacklisted w.e.f. 03-07-2013	09/2008, 11/2008 & 02/2009
7.	M/s Eagle International	17-50-9701-003-73	Blacklisted w.e.f. 03-07-2013	11/2008
8.	M/s Madina Trading Company	17-03-3917-001-28	Suspended w.e.f. 02-04-2012	03/2011 & 04/2011
9.	M/s Blush Impex	17-00-9999-766-19	Blacklisted w.e.f. 03-07-2013	06/2011, 07/2011 & 11/2011

6. From perusal of above referred table, it is evident that out of the nine suppliers the eight were blacklisted on 03-07-2013 and one was suspended on 02-04-2012 whereas the purchases were of the prior tax periods. The main thrust of the learned A.R was that all the suppliers were "OPERATIVE" at the time of making of business transactions. Similar is the position in respect of buyers to which the appellant supplied goods.

7. The learned D.R, on the other hand, supported the order of the learned Commissioner for the reasons recorded therein. He also submitted that the order of blacklisting was passed within the extended period, therefore, no interference is warranted.

8. After having heard the rival arguments and perusing the available record we are in consonance with the contentions of the learned A.R. We have observed that order of blacklisting was made on the basis of presumptions without bringing any material evidence on record. Even legal requirements as envisaged in STGO No.35/2012 have not been fulfilled. It is by now settled that subsequent blacklisting/suspension of a supplier could not be made tool to deprive the registered person of a valuable right accrued in his favour for purchases or transactions made prior to the suspension/blacklisting of registration of such supplier. In the present case from the chart supra it is abundantly clear that the blacklisting/suspension was made on the much later dates. Therefore, the ratio decided by the Tribunal in its reported case cited as 2010 PTD (Trib) 1631 is much relevant and applicable on all fours of the present case. The operative part of this judgment reads as under:

"9. Perusal of the impugned order in appeal passed by the learned Collector (Appeals) giving the impression that main emphasis of the learned first appellate authority was that the supplier of the appellant was declared blacklisted. However, even on this issue, I feel persuaded by the arguments advanced by the learned A.R. It is matter of record that the refund claim related to the tax period of December, 2003 and April, 2004 while the unit in question was declared blacklisted in 2007. It is also worth-mentioning that adjudication order was passed on 12-3-2008 much after the tax period when refund was claimed and almost year after the supplier unit was declared blacklisted. Scanning of the various judgments relied upon by the learned A.R. for the appellant in support of his contention also substantiate the view point urged by the learned A.R. The judgment of Lahore High Court reported as 1993 PTD 713 and Supreme Court of Pakistan reported as 2005 SCMR 492. It has been held by the Apex Court that:

**"it is well-settled principle of law that the executive orders or notifications, which confer rights and are beneficial, would be given retrospective effect and those which adversely affect or invade upon vested right cannot be applied with retrospective effect."**

"10. Following the ratio settled in the above mentioned judgments, we are of the view that the department was not within the ambit of law while passing the order against the appellant for the reason that the supplier (Jay Textile Mills) was blacklisted in 2007. Obviously, the supplier in question was operative during the period i.e. December, 2003 and April, 2004 when the business/transaction took place. We must further add that if it is allowed to happen then the engine of business would come to grinding halt because nobody would know with regard to fate of its business concern if the subsequent events like declaring a business blacklisted are allowed to cover the period when the other business concern with whom it was dealing with, was operative and the registered person who has been called upon to show cause entered into business transaction with the subsequently blacklisted business in good faith and as per prevailing conditions at that time."

In Writ Petition No.17185/2013 the Honourable Lahore High Court in its judgment re M/s Galaxy Textile Mills Limited Vs. Federation of Pakistan, etc. their Lordships have held that:

**"The Assistant Commissioner Inland Revenue shall decide the matter after complying with the followings:-**

- (i) An opportunity will be given to the petitioner to lead evidence in support of the supply of goods made by the petitioner and thereafter the overall evidence brought on the record shall be weighed and evaluated strictly in accordance with law.;

(ii) The status of the buyer existing at the time of supply of the goods by the petitioner shall be considered while deciding the show cause notice and not the status attained by the buyer subsequently."

9. For what has been said above, the impugned order is not sustainable and we annul the same for the following reasons:-

- i. The show cause notice was issued beyond the prescribed period of seven days;
- ii. The order of blacklisting was passed beyond the time limit of 90 days;
- iii. At the material time all the suppliers from whom the purchases made were active and they were suspended/blacklisted subsequently on much later dates; and
- iv. The ATIR vide its order STA No.1006/LB/2012 dated 19.02.2013 has set aside the show cause notice dated 07.09.2012 as well as order of suspension of registration dated 31.08.2012, therefore, the order of blacklisting passed with reference to the said show cause notice is void abinitio;

10. Order accordingly.

*-sd-*  
( CH. SHAHID IQBAL DHILLON )  
JUDICIAL MEMBER

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( MUHAMMAD AKRAM TAHIR )  
ACCOUNTANT MEMBER