

APPELLATE TRIBUNAL INLAND REVENUE, MULTAN
SPECIAL DIVISION BENCH, MULTAN

STA NO. 65 (MB) 2021

M/s Rab Nawaz And Company,
Grass Mandi Gharibabad, Multan

.....Appellant

Versus

Commissioner Inland Revenue, RTO, Multan

.....Respondent

Appellant by: Mr. Muhammad Imran Ghazi, Advocate
Respondent by: Mr. Muhammad Amjid, DR

Date of hearing: 17.09.2021
Date of order: 27.09.2021

ORDER



MIAN ABDUL BASIT (JUDICIAL MEMBER): The titled appeal has been filed by the registered person against the order No. CIR/MNZ/RTO/Fraud/2020-21/783 dated 10.08.2021 passed by learned Commissioner Inland Revenue RTO Multan (CIR) by virtue of which the appellant tax payer was blacklisted in terms of section 21(2) of the Sales tax Act 1990(The Act 1990).

2. Brief facts of the case culled out from the record of appeal file are that the M/S Rab Nawaz and CO., (the appellant) having STRN: 3277876114690 was called upon to show cause through notice dated 09-07-2014 as to why the registration may not be blacklisted. It was alleged in the show cause notice that the appellant was involved in making purchases during the period from 09/2019 to 09/2020 against fake/flying invoices issued by M/s Awan Commodities, Multan bearing STRN 3277876179728 and in this way, as per tax department, the appellant was involved in tax fraud. The tax department issued a show cause notice for suspension of registration vide No. CIR/M.Z/RTO/2020-21/8653 dated 12.06.2021, which as per impugned order,

was not responded and therefore the registration of the appellant was suspended vide order dated 08.07.2021. After placing the appellant on the list of suspended person the CIR, issued a show cause notice dated 09.07.2021 under section 21(2) of the Act, 1990 read with sub clause (i) of clause (a) of Rule 12 and Sub-clause (C) of Clause (a) of Rule 12 and sub clause (E) of clause (a) of Rule 12 of Sales The Rules 2006. It is mentioned in the order that no one attended the hearing, which resulted into passing of impugned order for black listing of the appellant. The appellant being aggrieved by the said order has laid challenge on the order dated 10.08.2021 through instant appeal filed under section 46(1)(b) of the Act 1990.

3. The case was fixed for hearing on 17.09.2021 on the due date Mr. Muhammad Imran Ghazi, Advocate appeared on behalf of the appellant registered person and Mr. Muhammad Amjid DR papered on behalf of the respondent department.

4. The learned AR reiterated the submissions made in appeal memo for making his case. He argued that the CIR was erred to backlist the appellant under Rule-12(b)(i)(ii) of the Salas Tax Rules, 2006 without legal application and appreciation of relevant rules. The learned AR submitted that the show cause notice was issued under section 21(2) of the Act, 1990 read with sub clause (i) of clause (a) of Rule 12 and Sub-clause (C) of Clause (a) of Rule 12 and sub clause (E) of clause (a) of Rule 12 of Sales The Rules 2006 whereas the order for black listing was passed under Rule 12(b) of the Rules 2006. It has further contended that the order of blacklisting does not refer any clause and sub clause of rule 12 of the Rules 2006 which rendered the order as illegal. He also submitted that the business transaction with the supplier namely M/s Awan Commodities, Multan was made during the years 2019 and 2020 and at



the time of transaction the supplier of the appellant was an active taxpayer. The learned AR submitted that the supplier of the appellant was registered under the sales tax law with effect from 25.10.2019 then how the registration of the said supplier could be suspended with effect from 11th December, 2015. The learned AR further contended that the order of black listing has been passed without establishing the mandatory condition of involvement in tax fraud; hence the order is illegal which should be knocked down. On the other hand the learned DR representing the department has argued that proper opportunity of hearing and defend the case was provided to the tax payer but he kept himself away from the proceedings, it was therefore, the commissioner IR put the registration number of the tax payer in the list of black listed persons. The learned DR stated that claiming of input tax on the fake invoices is sufficient to constitute the tax fraud on the part of registered person. He fully supported the order of CIR and prayed for the dismissal of appeal.



5. We have heard argument of learned AR of the appellant and have perused the record available with the appeal file. The main and preliminary contention of the AR of appellant is that the show cause notice was issued under sub clause (i) of clause (a) of Rule 12 and Sub-clause (C) of Clause (a) of Rule 12 and sub clause (E) of clause (a) of Rule 12 of Sales The Rules 2006, whereas the order for blacklisting was passed under Rule 12(b) of the Rules 2006 that too without referring a specific clause or sub clause or sub rule of Rule 12 of the Rules 2006. We read all the three documents i.e. show cause notice, suspension order and the order of Black listing which transpires that the show cause notice dated 09.07.2021 was issued under sub clause (i) of clause (a) of Rule 12 and Sub-clause (C) of Clause (a) of Rule 12 and sub clause (E) of clause (a) of Rule 12 of Sales The Rules 2006, and the suspension was

done under the provision of Rule 12(a)(i) of Rules 2006. Again, in continuation of the proceedings, black listing order was passed as per Rule 12(b) of Rules 2006 without referring any specific clause or sub clause of sub rule (b) of the Rules 2006 and is even different from the charges mentioned in show cause notice and or referred in the suspension order. In order to completely comprehend the issue it is appropriate to have carefully gone through all the three provisions of rule 12 of the Rules 2006 and for ease of reference the said rules are reproduced hereunder;



Blacklisting and suspension of registration:- Where the Commissioner or Board has reasons to believe that the registered person is to be suspended or blacklisted, in order to ensure that the LTUs and RTOs follow a uniform policy for suspension and blacklisting of sales tax registered persons under section 21(2) of the Act and for subsequent proceedings in such cases, the following procedure shall be followed, namely:-

(a) SUSPENSION

(i) Where a Commissioner, having jurisdiction, is satisfied that a registered person has issued fake invoices, evaded tax or committed tax fraud, registration of such person may be suspended by the Commissioner through the system, without prior notice, pending further inquiry. The basis for such satisfaction may inter alia include the following, namely:-

(A) non-availability of the registered person at the given address;

(B) refusal to allow access to business premises or refusal to furnish records to an authorized Inland Revenue Officer;

(C) abnormal tax profile, such as taking excessive input tax adjustments, continuous carry-forwards, or sudden increase in turnover;

(D) making substantial purchases from or making supplies to other blacklisted or suspended person;

(E) non-filing of sales tax returns;

(F) on recommendation of a commissioner of any other jurisdiction;

(G) any other reason to be specified by the Commissioner;

(ii) The suspension of registration shall take place through a written order of the Commissioner concerned, giving reasons for suspension. This order shall be endorsed to the registered person concerned, all other LTUs/RTOs, the FBR's computer system, the STARR computer system and the Customs Wing computer system for information and necessary action as per law



(iii) A registered person who does not file sales tax return for six consecutive months shall be caused to be suspended through the system without any notice;

(iv) In cases, where the buyers and suppliers of any such person, whose registration is being suspended, belongs to another LTU/RTO, and these buyers / suppliers are also required to be suspended, the Commissioner shall intimate the Chief Commissioner of the concerned LTU/RTO in whose jurisdiction such buyers/suppliers fall, in writing explaining the complete facts of the case and the reasons on the basis of which these buyers/suppliers are to be suspended, to initiate proceedings for suspension/blacklisting of the buyers/suppliers;

(v) No input tax adjustment/refund shall be admissible to the registered person during the currency of suspension. Similarly, no input tax adjustment/refund shall be allowed to any other registered persons on the strength of invoices issued by such suspended person (whether issued prior to or after such suspension), during the currency of suspension;

(vi) The Commissioner shall, within seven days of issuance of order of suspension, issue a show cause notice (through registered post or courier service) to the registered person to afford an opportunity of hearing with fifteen days of the issuance

of such notice clearly indicating that he will be blacklisted, in case-

- (A) there is no response to the notice;
 - (B) he has not provided the required record;
 - (C) he has not allowed access to his business record or premises; and
 - (D) any other reason specified by the Commissioner;
- (vii) In case show cause notice is not issued within seven days of the order of suspension, the order of suspension shall become void ab-initio;
- (viii) In case of non-availability of the suspended person at the given address, the notice may be affixed on the main notice Board of the LTU/RTO;
- (ix) On receipt of the reply to the notice and after giving an opportunity of hearing to the registered person, if the Commissioner is satisfied, he may order for revoking of suspension of the registered person;



(b) BLACKLISTING

- (i) in case, after giving an opportunity of hearing, the offence is confirmed, the Commissioner shall issue an appealable self-speaking order for blacklisting of the registered person, and shall proceed to take legal and penal action under the relevant provisions of the Act;
- (ii) The order of blacklisting shall contain the reasons for blacklisting, the time period for which any refund or input tax claimed by such person or by any other registered person on the strength of invoices issued by him from the date of his registration shall be inadmissible, any recovery to be paid or penalties to be imposed;
- (iii) the order of blacklisting shall be issued within ninety days of the issuance of the notice of hearing. In case, the order of blacklisting is not issued within this time period the suspension of registered person shall become void ab-initio;

(iv) copies of the order shall be endorsed to the registered person concerned, all other LTUs/RTOs, the FBR/PRAL computer system, the STARR computer system and the Customs Wing computer system. Each LTU/RTO shall circulate all such lists to their refund sections, audit sections and other concerned staff to ensure that the order is implemented in letter and spirit by all concerned;

(v) all LTUs / RTOs shall further circulate the copies of the order along with a computer system-generated list of invoices issued by the blacklisted persons as referred to in the preceding clause, to all officers of Inland Revenue having jurisdiction over the registered persons who have claimed credit of input tax or refund on the strength of the invoices issued by the said blacklisted persons; and

(vi) the officer of Inland Revenue receiving the aforesaid list under clause (v) shall issue show-cause notice under section 11 and sub-section (3) of section 21 of the Act to a registered person for rejecting the input tax or refund claimed against the invoices so circulated and further proceed to decide the matter as per law through a self-speaking appealable order and after affording a reasonable opportunity of being heard to such person, in the manner as provided in the said sub-section



(3).
From the perusal of above provision and examining the show cause notice dated 15-07-2019 it is noted that the show cause notice contained the allegation of Rule 12 (a)(i)(C)(E) which says (i) Where a Commissioner, having jurisdiction, is satisfied that a registered person has issued fake invoices, evaded tax or committed tax fraud, registration of such person may be suspended by the Commissioner through the system, without prior notice, pending further inquiry., (C) abnormal tax profile, such as taking excessive input tax adjustments, continuous carry-forwards, or sudden increase in turnover; & (E) non-filing of sales tax returns; but in typescript of show cause notice, the suspension order and the blacklisting order there is only allegation of claiming input tax on the basis of fake invoices. There is no allegation of

issuance of fake invoices by the appellant in the three documents (show cause notice, the suspension order and the blacklisting order) which leads to the result that sub clause (i) is not applicable because the department has also failed to establish the tax fraud through the impugned order on cogent and legally acceptable evidence. Further the sub clause C of the rule 12(i) of the Rules 2006 deals with the abnormal tax profile of the registered person but there is no charge of abnormal tax profile of the appellant hence the said sub rule is also not applicable in the case of appellant. Mere mentioning of sub clause or sub rule is not sufficient to declare the tax profile as abnormal rather it is the duty of the CIR to give valid reasons and causes to take the tax profile of a registered person as abnormal. The other rule referred in the notice and order is sub clause E of Rule 12(i) of the Rules 2006 which is about the non-filing of sales tax returns but again there is no allegation in the notice about non filing of sales tax returns and even it is also not mentioned in the order of black listing that for what tax period the appellant was non-filer of returns. Therefore the sub clause E is also not attracted in the matter in hand.



6. We therefore observe that the charges mentioned all the three documents (show cause notice, the suspension order and the blacklisting order) are not established and the order of black listing is totally obscure and vague which cannot be let to remain in legal framework. The whole of the proceedings were initiate in an arbitrary manner and the learned CIR while issuing the order for blacklisting, did not even readout the relevant provisions of rule 12 of the Rules 2006 which renders the whole exercise as futile and of no result. According to the rule 12(a)(i) of Rules 2006 the suspension can be done if the registered person is involved in issuing a fake / flying invoices and or otherwise involved in tax fraud. But the order of the learned CIR is silent as to the aspect of tax fraud and it is an admitted position that the appellant is

not involved in issuance of fake and flying invoices. It is therefore the order of black listing does not fulfill the two mandatory and predominant conditions for declaring a registered person as blacklisted. It is duty of the CIR to first establish the charge of issuance of fake and flying invoices and or to establish the tax fraud by means of legal tenable evidence before placing the registered person on the list of blacklisted persons. We have further noted that the order of black listing was passed under the rule 12(b) of the Rules 2006 and according to Rule 12(b)(ii) the order of black listing should speak about the reasons for blacklisting, the time period for which any refund or input tax claimed by such person or by any other registered person on the strength of invoices issued by him but we find no such observation; like as time for refund on the invoices issued by the appellant and or the detail of input tax claimed on the invoices of appellant, in the order of black listing and particularly the show cause notice was also silent about such allegation of refund and or the inadmissible input tax. Whole of the proceedings i.e. from the stage of show cause notice to the eventual step of passing the black listing order, the learned CIR has failed to establish the charge of tax fraud.



7. We have also gone through the contents of show cause notice and both the orders and find that through the notice dated 09.07.2021 it has been alleged that appellant made purchases for the period from 09/2019 to 09/2020 from M/S Awan Commodities, Multan who was involved in issuance of fake and flying invoices. The tax profile verification of M/S Awan Commodities shows that it was registered with the sales tax department on 25.10.2019 but the registration of the said supplier has been suspended with effect from 11.12.2015; which means the registration of M/S Awan Commodities, Multan has been suspended from the time of four years back from its registration. We have also noted from online verification of the tax profile of M/S Awan

Commodities dated 22.08.2021 that the status of the said supplier of appellant is suspended from 11.12.2015. This also proves to be another dent to the case of tax department because the suspension of registration of a registration person can be remained in force for a period of seven days and further extendable for a period of ninety (90) days as envisaged under clause (vi) of sub rule "a" of Rule 12 and clause (iii) of sub rule "b" of Rule 12 of the Rules 2006 respectively. It is also provided in these rules that in case of non-issuance of show cause notice within seven days; and if show cause notice is issued within prescribed time then non-issuing of blacklisting order within ninety days, the suspension order would be become void ab-initio. In the instant matter the supplier of the appellant is appearing as suspended for the



time more than the period provided in the rules, on verification portal of FBR. The ultimate corollary of which is that the suspension order of M/S Awan Commodities, Multan has already lost its legal force and be that as it may the supplier of the appellant has become an active taxpayer as per clause (vii) of sub rule "a" of Rule 12 and clause (iii) of sub rule "b" of Rule 12 of the Rules 2006. The natural outcome of the above circumstances is that the charge leveled against the appellant in the notice and impugned order, is taken to be dropped; because the supplier of appellant allegedly involved in issuing of fake and flying invoices, has become an active taxpayer by fiction of law.

8. The CIR neither referred any fake / flying invoice issued by appellant nor established tax profile of appellant as abnormal and so in our mind the primary duty of the CIR, while declaring the registration status of the appellant as blacklist, is to establish the involvement of the appellant in tax fraud through plausible and legally un-rebuttable reasons in line with the sections 2(37), 21 and rule 12 of the Sales Tax Rules 2006. Both the order are defective

in so far as the legal requirements of establishing a charge while passing an order of penal in nature as any order penalizing a person qua blacklisting of registration status requires legal and factual strong evidential backing; whereas both the order impugned herein this appeal were passed in perfunctory and arbitrary manner. The finding of fact which was not based on material available on record is obviously declared as illegal because it is trite law that the findings should be based on reasons containing the justification for findings in an order passed through adjudication. Hence the order passed in the instant case is in violation of the basic principle of law and without following the mandatory requirement of Section 24A of the General Clauses Act, 1897. The said position is also fortified by the judgments of the Superior Courts of the country reported as 2007 PTD 2500, 2005 PTD 2519, 2004 PTD 1973, PD 1995 (SC) 272 and 1983 SCMR 1014.



9. In the wake of above position the impugned order of blacklisting dated 10.08.2021 is vacated; resultantly the appeal of the appellant is hereby **allowed** and the CIR, concerned is therefore directed to restore the sales tax registration number of the appellant forthwith in its original status.

10. The order consists of Eleven (11) pages each page bears my signature.

Sd/-
(RIZWAN AHMED URFI)
ACCOUNTANT MEMBER

Sd/-
(MIAN ABDUL BASIT)
JUDICIAL MEMBER

Copy of the bench order forwarded to
1. The Appellant
2. The CIR
By Order
ASSISTANT REGISTRAR
Appellate Tribunal Inland Revenue
Multan
MS. Rab Nawaz & Co., Multan.
20/10/2021