

**APPELLATE TRIBUNAL INLAND REVENUE, MULTAN BENCH,
MULTAN**STA No.165/MB/2022
MA (STAY) No.607/MB/2022
(Period June-2016 to Nov-2016)M/s. Paradise Filling Station, Kot Addu
STRN # 0400132829715

...Appellant

Versus

The CIR, Multan-Zone, RTO, Multan

...Respondent



Appellant by:

Mr. Muhammad Imran Ghazi, Advocate.

Respondent by:

Mr. Muhammad Amjad, DR.

Date of Hearing:

15.07.2022

Date of Order:

15.07.2022

ORDER

MIAN ABDUL BASIT (JUDICIAL MEMBER): This is an appeal under section 46 (i)(b) of the Sales Tax Act, 1990 through which the Registered Person has laid challenge on the Blacklisting Order dated 04.04.2017 passed by Commissioner Inland Revenue, Multan-Zone, Multan. **[(CIR)]**

2. Facts in brief leading to the instant appeal are that the Registration Person was suspended vide order No.CRI/M.Z/RTO/2016-17/7530 dated 23.01.2017, on the allegation that during scrutiny of data available at computerized repository of the department, it was found that the registered person, given in the enclose list, did not file their monthly sales tax returns for the period June-2016 to November-2016 and or prior to it. In order to prevent misuse of these registration numbers, the tax authorities considered it necessary to suspend the registration of 676 registered persons. Non-filing of sales tax returns is in contravention of obligations imposed under Sales Tax

Act, 1990 rules or instructions issued thereunder, on the part of registered persons mentioned in enclosed list for six or more tax periods provides sufficient reason to believe that they are involved in tax fraud/evasion of tax. it was therefore the CIR, in exercise of powers conferred under section 21 (2) of the Sales Tax Act, 1990 read with Rule-12 (a)(i)(E) of the Sales Tax Rules, 2006 registration status of persons mentioned in the list enclosed with the suspension order was suspended. The Respondent/Department, thereafter, called upon the appellant including the other 675 registered persons to Show Cause Notice vide No.CIR/M.Z/RTO/BL-676/2017/416/8142 dated 27.01.2017 as to why Registered Persons may not be black-listed as envisaged under Section 21 (2) of the Sales Tax Act 1990 read with rule 12 (b) of the Sales Tax Rules, 2006 without any further correspondence. Subsequently the Registered Person / appellant was blacklisted from the date of its registration vide order No.CIR/M.Z/RTO/BL-676/2016-17/416/11117 dated 04-04-2017.

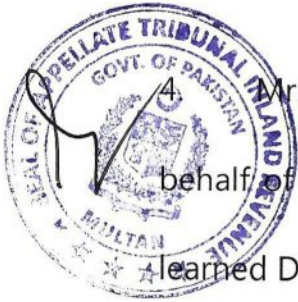


3 Feeling aggrieved, the Registered Person has come up in appeal before this Tribunal on the strength of following grounds taken as per memo of appeal: -

- i) *That the order of Commissioner IR, Multan Zone, RTO, Multan is bad in law and contrary to the facts of the case.*
- ii) *That the CIR is erred to suspend/blacklist the sales tax registration of the appellant under Rule 12 (a)(i)(E) of the Sales Tax Rules, 2006 without assurance of service of notices.*
- iii) *That the CIR is erred to issue self-contradictory show cause notice for suspension of Sales Tax registration of the appellant under Rule 12 (a)(i)(E) of Sales Tax Rules, 2006 and hence built up of superstructure without applying charging provisions*

given under section 21 of Sales Tax Act, 1990 is futile, arbitrary and void ab initio.

- iv) *That the CIR is erred to suspend the sales tax registration of appellant in hasty manner decided 676 cases through single order vide attaching a list of registered persons despite of the fact that Hon'ble Lahore High Court in STR No.01 of 2014 CIR Vs. M/s. T.M Gases Pvt Ltd., dated: 15.06.2016 answered this question against the department.*
- v) *That the CIR is erred to suspend/blacklist the sales tax registration of appellant under Rule 12 (a)(i)(E) of the Sales Tax Rules, 2006 without given opportunity of being heard through show cause notice of suspension.*



Mr. Muhammad Imran Ghazi, Advocate has tendered his appearance on behalf of the Registered Person. On the other hand Mr. Muhammad Amjad, learned DR appearing on behalf of the Respondent/Department.

5. The learned AR contended that the registration of 676 persons were suspended through a single suspension order dated 23.01.2017 that too without issuing a show cause notice. The learned AR submitted that presence of tax fraud is the precondition for suspension or blacklisting of the registration of a person in contemplation to section 21 of the Act, 1990, which in this was missing. Mere late filing or non-filing of sales tax registration without any element of tax fraud was not sufficient to blacklist the registration of the appellant, the learned AR stated. The learned AR further maintained that the department did not ever report any evasion of tax in the case of appellant therefore awarding a very heinous penalty of blacklisting is not warranted. The most important issue in this case is that the whole proceedings was conducted on the back of the appellant and both the orders i.e. the suspension order and the Blacklisting order were passed without providing

the opportunity of hearing. The learned DR, to controvert the submissions of learned AR, stated that as per rule 12a(i)E of the Sales Tax Rules 2006 the learned CIR was quite justified to suspend and blacklist the registration status of the appellant because the appellant did not file the sales tax returns for a period of six months. The learned DR fully supported the order of the learned CIR and prayed for maintaining the same.



The Arguments heard and record perused. We have noted that the suspension of registration of the appellant was done through a consolidated order dated 23.01.2017 passed in 676 cases. The suspension of registration can be done based on particular facts of the case of each person and suspension of registration by means of omnibus type order is illegal. It is prime rule of legal jurisprudence that each and every case has its own peculiar facts and circumstances and therefore every case has to be decided in line with its own facts and merit. It has not ended here, rather it is by ignoring the distinctive facts/circumstances of this case that a single/combined ex-parte order has been passed in respect of 676 registered persons, thereby not following at all the pre-requisites of the order/judgment as set out in Section 2(9) read with Order XX, Rule 4 and Order XLI, Rule 31 of Civil Procedure Code 1908 and Section 24A of the General Clauses Act, 1956, such a violative and sketchy order cannot become legally maintainable. It is patently correct that rules cannot extend the scope of the main section 21 of the Act, 1990 and also cannot override the main Section, so non-filing of monthly sales tax returns cannot result into suspension and blacklisting, which is illegal being beyond the scope of main section 21 of the Act, 1990. Further passing a joint order

without bringing on record the facts/circumstances of each case is against the law and shall be avoided.

7. The department also did not, admittedly, issue show cause notice and hence the said suspension order dated 23.01.2017 is illegal as has been held by the honorable Lahore High court in a judgment reported as M/s Imran Ali Lubricants VS Federation of Pakistan and others (**2018 PTD 1042**). We have also noted that the whole proceedings have been done in an ex-parte proceeding and any such proceedings of penal provisions are against the law of natural justice and shall not be allowed to remain in filed. The whole case was therefore, built on an illegal foundational document of suspension order which renders the whole subsequent proceedings as illegal and unwarranted by law.



8. Keeping in view the findings supra we are left with no other alternative except to cancel the impugned order being illegal, not maintainable suffering from incurable defects, with the directions that the appellant be treated as registered person. The respondent tax department is directed to restore the registration number of the appellant to its original number (STR). The tax department, if finds any incontrovertible evidence to suspend or blacklist the appellant, may initiate fresh proceedings for suspension or blacklisting by issuing a show cause notice and awarding adequate opportunity of hearing.

9. Since we have decided the main appeal of the Registered Person, therefore application for grant of stay has become infructuous and is disposed of accordingly.



The appeal as well stay application stands disposed of in the manner as indicated above.

The order consists of six (06) pages and each page bears my signature.

Sd/-

(DR. MUHAMMAD NAEEM)
Accountant Member

Sd/-

(MIAN ABDUL BASIT)
Judicial Member

Copy of the bench order forwarded to

1. The Appellant MCs Paradise Filling Station Kot Adde
2. The Respondent 111111

Mubashir Hussain
BY ORDER
23/08/2022.
ASSISTANT REGISTRAR
Appellate Tribunal Inland Revenue
Multan