

APPELLATE TRIBUNAL INLAND REVENUE,
SPECIAL DIVISION BENCH LAHORE (Camp Multan)

STA NO.224 (LB) 2020

M/s Ittehad Packages Multan Appellant

Versus

CIR, RTO, Multan Respondent

Appellant by : Mr. Muhammad Imran Ghazi, Adv
Respondent by : Mr. Qaswar Hussain Shah, DR

Date of hearing : 22.06.2020
Date of order : 22.06.2020

ORDER

The titled appeal has been filed by the **Registered Person** against the order No. CIR/M.Z/RTO/BL-2019-20/4962 dated 04th December, 2019 passed by learned Commissioner IR, RTO, Multan by virtue of which the appellant tax payer was blacklisted in terms of section 21 of the Sales Tax Act, 1990 (The Act 1990)

2. Brief facts of the case are that the M/S Ittehad packages (the appellant) having STRN: 0407481905728 was called upon to show cause through notice dated 15-07-2019 as to why the registration may not be suspended with the allegation that the appellant was involved in making purchases during the period February, 2015 from M/s Zubair Enterprises, Lahore bearing NTN 4229210-7 who was involved in claiming fake/ flying invoices issued by the different suspended / blacklisted suppliers and the proceedings culminated into suspension of registration number of the appellant vide order dated 3-01-2019. Thereafter, a show cause notice was issued vide No.CIR/M.Z/RTO/BL-2019-20/2980 dated 08.10.2019 under section 21(2) of the Sales Tax Act, 1990 read with sub-clause (vi) of clause (a) of Rule 12 of Sales Tax Rules , 2006 as amended. The Registered Person was conveyed the intention, through the notice, as to why it should not be blacklisted since the date of its registration. The appellant contested the matter before the Commissioner IR submitting the

reply to the show cause notice raising legal objection regarding the proceedings. The CIR did not find himself convinced and blacklisted the registration status of the appellant vide impugned order dated 4-12-2019. The appellant has laid challenge on the order dated 4-12-2019 through instant appeal filed under section 46(1)(b) of the Act 1990.

3. The case was fixed for hearing on 22.06.2020 on the due date AR appeared on behalf of the registered person and DR papered on behalf of the respondent department.

4. The 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 Sales Tax Rules, 2006 without legal application and appreciation of relevant rules. The AR also maintained that the suspension was done on violation of Rule-12(a) (i)(c) of the Sales Tax Rules, 2006 without confronted the same through show cause notice rendering the whole proceedings as illegal. He placed reliance on judgments 2013 PTD 2268, PTCL 2012 CL 210. He also submitted that the transaction with the supplier namely M/s Zubair Enterprises, Lahore was made in February 2015 and at that time the registration status of the supplier was active and the appellant do not have any mechanism to foresee the future status of its supplier he so, relying on the judgment reported as DG Khan Cement Company Vs. Federation of Pakistan reported as PLD-2013 (Lah) 693, maintained that the order of black listing is illegal. He further argues that the show cause notice for suspension was issued on different allegation and suspension was done on different allegation in deviation from the allegation of show cause notice and the order of black listing was made yet on another allegation which showed the uncertainty of the CIR and it is settled principle of law that the penal provisions are to be exercised with definite and concrete substance and any vagueness and doubt would vitiate the proceedings. 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 could not rebut the charges by means of



documentary and solid plausible evidence, it was therefore, the commissioner IR put the registration number of the tax payer in the list of black listed persons. 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, suspension order and the order of Black listing (impugned in this appeal) contained different set of allegation. In order to address this argument, 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 15-07-2019 was issued on the basis of Rule 12(a)(i)(A)(B) of the sales tax rules 2006 (the Rules 2006) and the suspension was done under the provision of Rule 12(a)(i)(A)(C) of Rules 2006 by deviating the charge referred in the show cause notice. Again, in continuation of the proceedings, black listing order was passed as per Rule 12(b)(i)(ii) of Rules 2006 which was even different from both the charges mentioned in show cause notice and 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;

12 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;

(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;

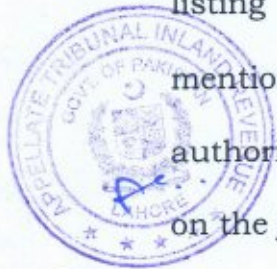
(ii) the order of blacklisting shall contain the reasons for blacklisting, the time period for which any refund or input tax claimed by such person or by any other registered person on the strength of invoices issued by him from the date of his registration shall be inadmissible, any recovery to be paid or penalties to be imposed;

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)(A)(B) which says **(A)** the registered person was not available at the given address; & **(B)** Appellant refused to allow access to business premises or as the case may be refused to furnish records to an authorized Inland Revenue Officer. Whereas the wordings of the show cause notice is in complete derogation of the provisions contained in above referred rule and the learned CIR while passing the suspension order changed the allegation and suspension was done under Rule 12(a)(i)(A)(C) of Rules 2006. According to the rule 12(a)(i)(C) of Rules 2006 the suspension can be done if the registered person shows the abnormal tax profile, such as taking excessive input tax adjustments, continuous carry-forwards, or sudden increase in turnover but we, again, noticed that the said rule is also not in consonance with the contents of show cause notice and even no allegation of abnormal tax profile and or excessive input tax claim was leveled in the notice. We further considered the order of black listing was passed under the rule 12(b)(i)(ii) 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; upon receiving response on a specific charge from the appellant, kept on changing the stance as to the accusation against the appellant. This act/ practice of the CIR has established that the CIR himself was not certain regarding the violation of law/Rule on the part of appellant warranted blacklisting. Hence the suspension order and the order for black listing of registration of appellant in deviation from the specific charges mentioned in the show cause notice is palpably illegal and without lawful authority and the same are not sustainable under the law. Reliance is placed on the judgments reported as The collector of central Excise and Land Customs and Others VS Rahm Din (**1987 SCMR 1840**). Reliance is also placed on the judgments reported as 2015-PTD-416 and 2013-PTD-655.

6. We have also gone through the contents of show cause notice and both the orders and find that through the notice dated 15-07-2019 it has been alleged that appellant made purchases for the month of February 2015 from M/S Zubair Enterprises Lahore who was allegedly involved in tax fraud by claiming input tax on the strength of invoices issued by some blacklisted persons and the suspension order dated 03-10-2019 was passed without considering the reply of the appellant wherein it was categorically claimed by the appellant that a team of RTO Multan visited the office of appellant and found the unit at its registered place. In consequence of the proceedings the registration status of the appellant was declared as blacklisted vide order dated 04-12-2019 with same allegation that the supplier of the appellant was involved in claiming the input tax on the strength of fake / flying invoices issued by different registered persons. Bothe the orders (order of suspension and blacklisting order) are silent regarding the date of blacklisting of the



supplier of appellant to corroborate the purchases made in the month of February 2015 and the reasons of inordinate delay of four and half years in initiate proceedings in the month of July 2019 for the transaction taken place in February 2015. We find no provision in the Act 1990 and rules framed thereunder whereby the registered person can be blacklisted on the mere assertion that the suppliers of the appellant was involved in claiming input tax on the basis of fake / flying invoices that too without establishing the chronological overlapping of transaction between the trilateral parties i.e. the appellant, the supplier of appellant and the suppliers of the appellant's supplier.

7. Scrutiny of both the orders (order of suspension and blacklisting order) divulges that the CIR did not refer any evidence and documents, like as the name of the suppliers of the supplier of appellant, the date of blacklisting of those suppliers, the amount of refund and or input tax claimed on the fake / flying invoices, while declaring the sales tax registration of the appellant as blacklist. We also note that the aspect of linkage between the purchases made by the appellant in February 2015 and the purchases made by the supplier of appellant, allegedly, from its blacklisted suppliers is totally missing in both the orders. The CIR neither referred any fake / flying invoice issued by appellant nor established that the tax profile of appellant was 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 was 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. 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.



8. The appeal of the appellant, on the basis of findings and circumstances discussed above, is hereby **allowed** and the CIR, concerned is therefore directed to restore the registration number / status of the appellant.

9. It is however clarified that the CIR concerned is at liberty to initiate any proceedings against the appellant, if he is found involved in tax fraud, exactly in accordance with the Act 1990, rules framed there-under and by following the judgments rendered by the honorable higher judicial forums in this regard.

10. The appeal is allowed as indicated above.

11. The order consists of 7 (seven) each page bears my signature

Sd/-
(MIAN ABDUL BASIT)
JUDICIAL MEMBER

Sd/-
(DR. MUHAMMAD NAEEM)
ACCOUNTANT MEMBER

CERTIFICATE U/S 5 OF THE LAW REPORT ACT

This case is fit for reporting as it settles the principles highlighted above.

Copy of the bench order forwarded to

1. The Appellate
2. THE CIR,

By order

M/s. Ittehad Packages Multan
Multan
Multan
Assistant Registrar
Appellate Tribunal Inland Revenue
Lahore.

Basit
(MIAN ABDUL BASIT)
JUDICIAL MEMBER