

IN THE APPELLATE TRIBUNAL INLAND REVENUE OF PAKISTAN
[DIVISION BENCH, MULTAN]

STA No.283/MB/2021

[Under Section 21(2)]

M/s. Taunsa Tyre & Battery Service,
Chowk Hashim, Taunsa Sharif, DG Khan
STRN #.0400224158815

...Appellant

Versus

The Commissioner-IR, Multan-Zone
RTO, Multan.

...Respondent

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

Date of Hearing : 04.05.2023
Date of Order : 26.05.2023

O R D E R



CH. MUHAMMAD AZAM (JUDICIAL MEMBER): Through the titled appeal the Registered Person has challenged the Blacklisting order No.CIR/M.Z/RTO/BL-676/2016-17/493/11249 dated 05.04.2017 passed by the Commissioner-IR, Multan Zone, RTO, Multan.

BRIEF FACTS

2. Facts in brief leading to the instant appeal are that the Registration Person was suspended vide order No.7530 dated 05.04.2017, on the allegation that during scrutiny of data available with the department, it was found that the registered person did not file their monthly sales tax returns for consecutive six tax periods from June-2016 to November 2016 and prior to it. In order to prevent misuse of this registration number, the tax authorities considered it necessary to suspend the registration of the Registered Person. Non-filing of sales tax returns is in contravention of obligations imposed under Sales Tax Act, 1990 and rules and instructions issued there under. On the part of registered person 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



Registered Person was suspended. The Respondent/Department, thereafter, called upon the appellant to Show Cause Notice vide No.CIR/M.Z/RTO/BL/676/2017/493/8219 dated 27.01.2017, as to why

Registered Person 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/MNZ/RTO/BL-676/2016-17/493/11249 dated 05.04.2017.

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

- 1) That the order of the Commissioner Inland Revenue, Multan Zone, RTO, Multan is bad in law and against the facts of the case.
- 2) That the CIR is erred to suspend/blacklist the sales tax registration of the appellant w.e.f. date of registration without assurance of service of notices and did not adopt the procedure laid down under rule 12(a)(viii) of the Sales Tax Rules 2006 regarding affixing of notice on the main notice board of RTO, Multan.
- 3) That the CIR is erred to suspend the sales tax registration of appellant under Rule 12(a)(i)(E) of the Sales Tax Act, 1990 vide order dated: 23.01.2017 through collective order of 676 registered persons in which name of the appellant appears at Sr. No.493. Hon'ble Lahore High Court, Multan Bench, in STR No.01 of 2014 dated: 15.06.2016 categorically answered the proposed legal question regarding "cases of more than one registered person cannot be decided in a single order" against the department.
- 4) That the CIR is erred to suspend/blacklist the sales tax registration of appellant without issuance of show cause notice for suspension.
- 5) That the CIR is erred to blacklist the sales tax registration of appellant where no loss of revenue is occurred and worthy CIR(A) Multan has endorsed this fact vide order-in-Appeal No.261 dated: 16.04.2019 in which penalty imposed against non filing of sales tax returns were deleted.
- 6) That the order of the learned Commissioner Inland Revenue, Multan Zone, RTO, Multan is bad in law and contrary to the facts of the case due to some other reasons which may be adduced at the time of hearing.

- 7) That the order of CIR be cancelled being baseless and illegal and directions may kindly be issued for restoration of Blacklisting.

4. Call notices were issued to the parties concerned. On due date Mr. Muhammad Imran Ghazi, Advocate has tendered his appearance on behalf of the Registered Person. On the other hand Mr. Muhammad Qaswar Hussain, learned DR appeared on behalf of the Respondent/Department.



ARGUMENTS OF AR

The learned AR contended that the registration of the Registered Person was Blacklisted vide order dated 05.04.2017. 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 was missing in this case. Mere late filing or non-filing of sales tax returns without any element of tax fraud was not sufficient to blacklist the registration of the appellant. The learned AR further maintained that the department did not ever report any evasion of tax in the case of appellant therefore awarding penalty of blacklisting is not warranted. The most important issue in this case is that the whole proceedings were 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 AR prayed for dismissal of order dated: 05.04.2017 and prayed for restoration of sales tax registration of the registered person.

ARGUMENTS OF DR

6. Learned DR to controvert the submissions of learned AR, stated that as per Rule 12(a)(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 consecutive six tax

periods. The learned DR fully supported the order of the learned CIR and prayed for maintaining the same.

FINDINGS

7. We have heard the parties, perused the record and came to following conclusion:-

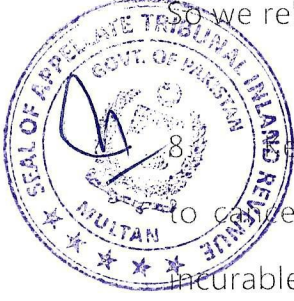


We have noted that the Suspension and Blacklisting of registration of the appellant was done through order dated 23.01.2017 & 05.04.2017 respectively. The suspension of registration can be done based on particular facts of the case, thereby not following at all the pre-requisites of the order/judgment 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 from June 2016 to November 2016 cannot result into suspension and blacklisting, which is illegal being beyond the scope of section 21 of the Sales Tax Act, 1990 especially in absence of tax fraud, findings of the CIR that non-filing of return for consecutive 6 times is ground for blacklisting. It is not so. It cannot be presumed that non-filing of six consecutive monthly sales tax returns is tax fraud. Such application is never encouraged by tax laws and Superior Courts. Assumptions and presumptions are always discouraged in tax issues. So authorities below have applied wrong Law for blacklisting the appellant.

Decision of 676 registered persons in matter of similar nature, is discouraged by Hon'ble High Court vide judgment passed in STR No.1 of 2014 (CIR Vs M/s. T M Gases Pvt Ltd) dated 15.06.2016. Admittedly appellant was not in attendance before CIR at the time of passing order. Appellant was not given right of hearing in any manner. Order was passed ex-parte and this fact is mentioned in order dated 05.04.2017. There is no proof of issuance of show cause notice to the Appellant. Appellant has protection of Article 10-A of Constitution of Islamic Republic of Pakistan and to a fair trial and due process.

He had no right of hearing at both stages before authorities below. Honourable Lahore High Court held certain principals in citation 2018 PTD 1042, 2021 PTD 1813 (Sindh High Court) which have not been applied by the authorities below.

So we rely on above citations.



Keeping in view the findings supra we are left with no alternative except to cancel the impugned order being illegal, not maintainable, suffering from incurable defects, with the direction 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).

9. Files be consigned to the record room after issuance of copies to the concerned persons.

10. It is certified that order in hand consists of Five (05) pages and each page has been signed by us.

-Sd-

(CH. MUHAMMAD AZAM)
Judicial Member

-Sd-

(DR. MUHAMMAD NAEEM)
ACCOUNTANT MEMBER

Copy of the bench order forwarded to
1. The Appellant *M/S Taunsa Tyre & Battery Service, D.K. Khan*
2. The Respondent *//*

BY ORDER

ASSISTANT REGISTRAR
Appellate Tribunal Inland Revenue
Multan

25.7.2023