

APPELLATE TRIBUNAL INLAND REVENUE OF PAKISTAN
DIVISION BENCH, MULTAN

STA No.85/MB/2024
MA (Stay) No.258/MB/2024

M/s. Faheem Enterprises,
Office No.26, Sher Shah Plaza,
Sher Shah Road,
Multan Cantt
STRN No:0400368342113

Appellant

Versus

The CIR, Multan-Zone, RTO, Multan

Respondent

Appellant by : Mr. Muhammad Imran Ghazi, Advocate

Respondent by : Mr. Zahid Mahmood, CIR, Multan Zone,
(on Court Call)
Mr. Haroon Rashid, DR

Date of hearing : 03.04.2024

Date of Order : 03.04.2024

ORDER

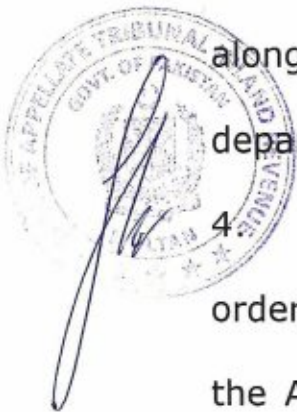
MIAN ABDUL BASIT (JUDICIAL MEMBER): The above-titled appeal has been filed by the registered person before this Tribunal under section 46(1)(b) of the Sales Tax Act, 1990 against the impugned order of Blacklisting of Sales Tax Registration vide Order No.CIR/MNZ/RTO/2024/8259 dated 08.03.2024, passed under section 21(2) of the Sales Tax Act, 1990 (**The Act, 1990**) by the learned Commissioner Inland Revenue, Multan Zone, RTO, Multan (**the Commissioner**). The order of the learned commissioner has been challenged on the grounds set forth in memo of appeal.



2. Brief facts of the case are that the registered person was reportedly involved in evasion of sales tax by way of claiming input tax against the fake and flying issued by M/s. Falcon International formerly known as M/s. A.K International to reduce his actual tax liability and committed tax fraud. It rendered the registration of appellant liable to be suspended / blacklisted. On the basis of these facts, the registration of the appellant was blacklisted vide impugned order in terms of section 21(2) of the Act, read with Rule 12(b) of the Sales Tax Rules, 2006.

3. Mr. Muhammad Imran Ghazi, Advocate appeared on behalf of the appellant/registered person and Mr. Zahid Mahmood, learned CIR, Multan Zone, RTO, Multan appeared on court call along with Mr. Haroon Rasheed, DR represented the tax department.

4. The learned AR contended that the suspension/blacklisting order did not reflect any reasons as required under section 21 of the Act, 1990 and in rule 12 of the Rules 2006, which was in depravity to 24A of the General Clauses Act, 1897. The learned AR further argued that upon careful examination of the suspension/blacklisting order, it is evident that the suspension/blacklisting was carried out without any legally recognized evidence of tax fraud or tax evasion as stipulated in Section 21 of the Ordinance, 2001. The learned AR further asserted that the appellant was not granted an opportunity for a hearing, and even the suspension/blacklisting order was not



served upon the appellant. In pursuance to our order dated 01.04.2024, the learned commissioner Inland Revenue appeared and submitted that the suspension/blacklisting was carried out on the directives issued by the Federal Board of Revenue. According to the learned commissioner, the registered person was involved in the activities covered under the provision outlined in section 21 of the Act, 1990, which led him to suspend/blacklist the registration of the appellant. When asked whether the reasons for suspension/blacklisting, as outlined in Section 21 and Rule 12 of the Sales Tax Rules 2006 (**the Rules 2006**), were clearly communicated, the learned Commissioner failed to provide any satisfactory explanation. The learned CIR asserted that the tax department had substantial evidence implicating the appellant in tax evasion activities; however, the said pieces of evidence could not be confronted to the appellant through the notice during the suspension/blacklisting proceedings. The learned commissioner also argued that the appellant opted not to join the proceedings, therefore, there was no alternative but to proceed with the suspension/blacklisting based on the information available to the tax authorities.



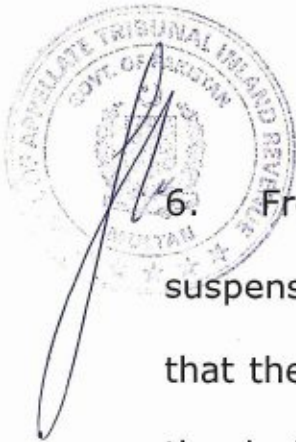
5. We have given due consideration to the arguments of the parties and perused the record of the appeal file. In order to comprehend the issue involved in this case, it is deemed necessary to reproduce the operative part of the suspension/blacklisting order, which reads as follows:

"The Directorate of Intelligence & Investigation (IR) Karachi vide letter DIR-I&I- IR/FTO-5481/Khi/2023-24/2172 dated 07-02-2024 reported that M/S FAHEEM ENTERPRISES bearing NTN: 3683421-1 & STRN: 0400368342113, is a buyer of M/S Falcon International formerly known as M/S A.K International bearing STRN: 3277876260952 and claimed/adjusted Input tax against fake/flying invoices to reduce his actual tax liability and committed tax fraud within the meanings of section 2(37) of the Sales Tax Act, 1990.

2. In this way, the Sales Tax Registration of M/S FAHEEM ENTERPRISES, was suspended by this office vide order No. 7733 dated 20-02-2024 in terms of Section 21(2) of the Sales Tax Act, 1990 read with Rule-12(a)(i) (C) of the Sales Tax Rules, 2006 as the registered person found involved in tax fraud and evasion of sales tax by way of adjustment of input tax against fake purchases.

3. Moreover, the tax profile of the registered person reveals that sales tax returns are being filed reflecting purchase and sales, which makes the registered person suspicious in the eyes of law. A show cause notice regarding blacklisting of STRN of the registered person was issued by this office but the same remained un-complied with.

4. Therefore, in exercise of powers conferred under section 21(2) of the Sales Tax Act, 1990 read with Rule-12 (b)(i) of the Sales Tax Rules, 2006, registration status of M/S FAHEEM ENTERPRISES bearing NTN: 3683421-1 & STRN: 0400368342113, is hereby **Blacklisted** from the date of registration till further orders."



6. From the above, it is evident that the suspension/blacklisting was carried out based on the assertion that the registered person filed the sales tax returns containing the declaration of sales and purchases, thereby raising suspicion regarding the business activity of the registered person. According to the suspension order M/s. Falcon Enterprises formerly known as M/s. A.K International made supplies to appellant/registered person, however, the order does not indicate any relation of the appellant with the said registered

person. The learned Commissioner has suspended/blacklisted the registration without developing any nexus between the appellant and M/s. Falcon Enterprises formerly known as M/s. A.K International and even there is no mention of fake invoices as on the basis of which the input tax was claimed by appellant. This raises serious questions about the procedure followed by the tax department in suspending/blacklisting of registered persons. If the act of fulfilling a basic requirement of tax compliance, such as accurately reporting sales and purchases, without determining the fact of fake/flying invoices, it calls into question the fairness and objectivity of the suspension/blacklisting process. In essence, the assertion by the tax department underscores a critical need for clarity and coherence in the criteria used to evaluate businesses' compliance with tax regulations. Without a robust and transparent framework, there is a risk of arbitrary actions that could unfairly penalize law-abiding businesses and erode trust in the tax system. The suspension/blacklisting order neglected to emphasize clear and unambiguous evidence of tax evasion or fraud; instead, the suspension/blacklisting were done solely on the presumption that the input tax claimed by the registered person stemmed from fake invoices. This approach contradicts established principles of legal jurisprudence. The suspension/ blacklisting order does not indicate the invoices that have been declared as fake through the order passed by the competent authority. Further, it is to be noted that unless a proceeding under section

11 of the Act, 1990 is conducted, the aspect of admissibility of input tax cannot be determined. In this case, no proceeding under section 11 of the Act, 1990 has been conducted; rather the registered person was suspended/blacklisted based on presumption and this occurred without confronting the material evidence upon which the appellant's suspension/blacklisting was based. When this situation was brought to the attention of the learned Commissioner, he acknowledged that the basis for suspension/blacklisting should have been confronted to the appellant. The learned Commissioner undertakes to restore the appellant's registration and any fresh necessary proceedings shall be conducted in strict accordance with the law and procedure provided under the Act, 1990.



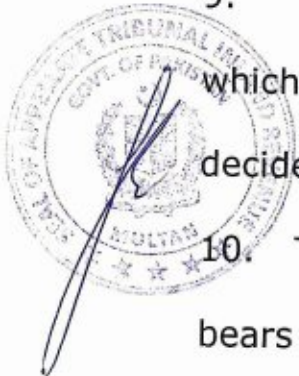
7. In view of the foregoing circumstances, the registration of the appellant is directed to be restored forthwith. However, the tax authorities may proceed fresh based on the material and evidence sufficient for the suspension/blacklisting of the registration, as stipulated in section 21 of the Act, 1990. It is also mandated that the tax authorities must initially ascertain whether the input tax claimed by the registered person was derived from fake or fraudulent invoices through proceedings conducted under Section 11 of the Act, 1990. Suspension or blacklisting can only be carried out in accordance with the criteria stipulated in Section 21 of the Act, 1990, and not otherwise. The fresh proceedings for suspension/blacklisting, if permissible, shall be conducted strictly in accordance with the

observations made hereinabove and particularly in allegiance to the provisions of section 21 of the Act, 1990 and rule 12 of the Rules 2006. It is needless to observe that if the tax authorities intend to proceed with the suspension/blacklisting of the appellant, they must grant the appellant a fair and adequate opportunity of hearings before ultimately suspending/blacklisting them.

8. The appeal filed by the appellant/RP succeeds in above terms.

9. The RP also filed a Misc. application for grant of stay which also stands disposed of as the main appeal has been decided.

10. The order consists of seven (07) pages and each page bears my signature.



Sd -

(IMRAN LATIF MINHAS)
ACCOUNTANT MEMBER

Sd -

(MIAN ABDUL BASIT)
JUDICIAL MEMBER

Copy of the bench order forwarded to
1. The Appellant *M/S. Faheem Enterprises, Mal*
2. The Respondent

BY ORDER
[Signature]
17.4.24
ASSISTANT COMMISSIONER
Appellate Tribunal Income Tax and Revenue
Multan