

IN THE APPELLATE TRIBUNAL INLAND REVENUE OF PAKISTAN

(DIVISION BENCH, MULTAN)

**STA No.07/MB/2024 &
MA (Stay) No.10/MB/2024**

MR. IMRAN SARWAR

Prop. M/s Khurram Electronics
Shahi Road, Rahim Yar Khan.

STRN No: 3277876205173

...Appellant

Versus

The Commissioner Inland Revenue
Rahimyar Khan Zone,
RTO, Bahawalpur.

...Respondent

Appellant by : Mr. Imran Ghazi, Advocate
Respondent by : Mr. Mashooq Hussain, DR

Date of hearing : 10.01.2024
Date of Order : 10.01.2024

ORDER

IMRAN LATIF MINHAS (ACCOUNTANT MEMBER): The above titled appeal is filed by the Registered Person (Appellant) directly before this Tribunal under section 46(1)(b) of the Sales Tax Act, 1990 against an order of suspension of Sales Tax Registration vide Order No. CIR-RYK/SUB-BL/23-24/R-BWP-23-0786/1176 dated 21.1.2.2023, passed u/s 21(2) of the Sales Tax Act, 1990 (The Act) by the Commissioner Inland Revenue, Rahimyar Khan Zone, RTO, Bahawalpur (CIR).

2. Briefly stated, the relevant facts of the case are that, the CIR examined the sales tax returns of the RP and observed that he had shown huge carry forward amounting to Rs.77,176,37/- in the month of June, 2023. For the month of September 2023, RP had shown input tax carry forward for Rs.91,282,063/- which when worked back provided value of unsold stock for Rs.570.12 M. A team was constituted for stock taking which computed value of stock at Rs.162.514 on the date of stock taking at the declared premises which indicated that stock valuing Rs.407.609 declared for the month of September 2023 was sold without payment of sales tax. The RP was granted



opportunity of hearing which was attended by AR of the RP. Written reply was furnished which was found unsatisfactory on following grounds;

- i. *No evidence for fulfillment of all tax liability in respect of 3rd scheduled items was furnished.*
- ii. *The RP admitted that huge stock was sold out without payment of sales tax in the garb of 3rd scheduled items.*
- iii. *No supporting evidence for discharge of tax liability by the manufacturer in case of 3rd scheduled items was furnished.*
- iv. *Status as dealer/distributor of any manufacturer could not be established through documentary evidence.*
- v. *Retail price was not embossed on many items claimed as 3rd schedule items in contravention of section 33(26) of the Act.*

Thus, the RP was held to have deprived the exchequer sales tax revenue amounting to Rs.516.162M, thus the sales tax registration of the RP was suspended vide order supra u/s 21(2) of the Act read with Rule 12 of the Sales Tax Rules 2006 (the Rules). The RP is contesting the impugned order on the basis of grounds of appeal as per memo of appeal.



3. This case came up for hearing. It was contended by the AR that the very basis of blacklisting was invalid as neither the suspension order was served nor the department involved the RP in the proceedings. No basis of terming the manufacturing unit. Lack of proper opportunity was also highlighted. The learned DR supported the order of the learned CIR and contended that the learned Commissioner IR had rightly passed the impugned order and there was no infirmity in the impugned order. He accordingly prayed for rejection of appeal.

4. On the date of hearing the representatives of the RP and the department presented their arguments. The AR contested the impugned order on the basis of grounds of appeal and argued that suspension order was passed without providing proper opportunity to present the case. He submitted that record of the RP was taken by the department and no further record was requisitioned to answer to the observations on the basis of which suspension order was passed. He further contended that the stock stored at another premises was not taken into account on grounds that the same was not declared despite the fact that proper rent agreement

was furnished. He highlighted that no fake invoice allegedly issued by the RP was confronted which was necessary in terms of section 21(2) of the Act. He denied any admission by the RP regarding sale of goods in the garb of 3rd scheduled items and contended that no such sale was identified by the department despite having provided access to all record. The DR on his part supported the order of suspension and contended that the order was passed after proper enquiry to save the exchequer from any further loss.

5. We have heard both the parties and examined the impugned order. Although the department had suspended registration of the RP on the basis of an inquiry conducted independently by the Commissioner concerned, we have observed many lapses in the proceedings which warrant a review of the decision. It would be appropriate to reproduce relevant extract from section 21(2) of the Act and Rule 12

of the Rules governing suspension of sales tax registration.



Sub-section (2) of Section 21 of the Act.

(2) Notwithstanding anything contained in this Act, in cases where the Commissioner is satisfied that a registered person is found to have issued fake invoices or has otherwise committed tax fraud, he may blacklist such person or suspend his registration in accordance with such procedure as the Board may by notification in the official Gazette, prescribe.

Rule 12(a) of the Rules.

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, 52[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;

(Emphasis supplied)

Our observations are as under;

- i. The first observation of the CIR, as also emphasized by the DR, abnormal tax profile in terms of Rule 12(a)(C) of the Rules supra, is valid. However, the allegation is not substantiated with any record. Profile of only two months i.e. June 2023 and September 2023 is taken into account which is not sufficient to ascertain the yearly turnover of the RP or quantum of his business. It would have been appropriate to examine the sales tax return filed over a period of 12 months to establish the quantum of work of the RP to determine taking excessive input tax adjustments, continuous carry-forwards, or sudden increase in turnover.
- ii. The CIR has observed that the RP was making supplies of goods in the garb of 3rd schedule items, however, despite having carried out stock taking and examined record, no such commodity, outside the purview of 3rd schedule to the Act, was pointed out.
- iii. The impugned order does not provide any information regarding confronting the RP, of the observations on the basis of which the RP was suspended. It is mentioned in the impugned order that the RP could not establish its status as a distributor with documentary evidence i.e. dealership certificate etc., but the order does not reflect if such evidence



was ever called from the RP nor reply of the RP is discussed in the impugned order.

- iv. The reliance of CIR on the provisions of section 33(26) of the Act is misplaced. The said provision, as reproduced below, relates to levy of penalty on a manufacturer or importer for not printing retail price on the goods.



26. Any person, being a manufacturer or importer of an item which is subject to tax on the basis of retail price, who fails to print the retail price in the manner as stipulated under the Act.	Such person shall pay a penalty of ten thousand rupees or five per cent of the amount of tax involved, whichever is higher: Further, such goods shall also be liable to confiscation. However, the adjudication authority, after such confiscation, may allow redemption of such goods on payment of fine which shall not be less than twenty percent of the total retail price of such goods.	Sub-section (27) of section 2 and clause (a) of sub-section (2) of section 3.
--	--	---

Clearly, the RP cannot be held responsible for an act prescribed for manufacturer or importer.

- v. The department has carried stock taking but the nature of stock held or sold is not discussed in the impugned order.
- vi. The refusal of the department to take into account the stock stored in another premises not declared is not sound. No provision of law to exclude stock in undeclared premises is relied upon. No penalty for such non declaration is pointed out.

6. In view of above, we are of the considered opinion that the RP should be confronted with the detail of stock nor falling in the purview of 3rd schedule to the Act. He should be provided with an opportunity to establish his status which could be rebutted with cogent reasons. The stock in separate premises should be taken into account unless specifically prohibited by the law. Lastly, the department should decide

the case of tax fraud and create tax liability under relevant provision of law then proceed with suspension etc. in accordance with the law. Here we would like to refer to the judgment of the Hon'ble Supreme Court of Pakistan in case of "Assistant Director Intelligence and Investigation, Karachi vs. M/s. B.R. Herman and others" reported as (PTCL 1993 CL 539) which requires to confront the taxpayer all issues on the basis of which any order is to be passed against him. The apex court held as under:-

QUOTE

"Even in cases of suspicion of commission of illegality, details should be provided to the party to enable him to have an opportunity to produce all the relevant documents and disclose information. Depending on the facts and circumstances of a case, any notice without disclosing any fact or particulars for which information or documents are required will be in violation of the principles of natural justice and may be struck down as illegal and without jurisdiction."



UNQUOTE

7. With the observations as above, we remand back the case to the CIR for re-examination. In the meantime, we order that the registration of the RP may be restored immediately.
8. The RP has also filed an application for grant of stay. As the main appeal filed has been decided in the manner and to the extent discussed above, the application for grant of stay has become infructuous. In view of infructuous.
9. This order comprise of six (06) pages each of which has been signed by me.

Sd/-
(CH. MUHAMMAD AZAM)
JUDICIAL MEMBER

Sd/-
(IMRAN LATIF MINHAS)
ACCOUNTANT MEMBER

Copy of the bench order forwarded to
1. The Appellant Ms. Imran Sarwar Pappi Khuram
2. The Respondent Electronics, RVK

BY ORDER
[Signature] 30-1-24
ASSISTANT REGISTRAR
Appellate Tribunal Inland Revenue
Multan