

TaxHelpline 2013/201

INLAND REVENUE APPELLATE TRIBUNAL

S.T.A. No.150/LB of 2013, decided on 2nd May, 2013. Date of hearing; 23 April, 2013

Before Nazir Ahmad, Judicial Member and Muhammad Akram Tahir, Accountant Member

Imran Rashid for Appellant. Ms. Fouzia Fakhar, D.R. for Respondent

Messrs USMAN JAVED ENTERPRISES, FAISALABAD
Vs
CIR (LEGAL DIVISION), FTO, FAISALABAD

ORDER

The titled appeal preferred by the registered person is directed against the order of the learned Commissioner Inland revenue, Zone-II, Faisalabad dated 14-9-2012 whereby the sales tax registration of the appellant was suspended.

2. Facts of the case in brief are that on interim scrutiny of record it was observed that the registered person had adjusted input/output against sales/purchases of black-listed/suspended/non-filer units. Further, that the supply of goods had not taken place as envisaged under section 2(14) of the Sales Tax Act, 1990 and as such it was alleged that the appellant had committed a tax fraud. Therefore, in exercise of powers conferred under section 21(2) of the Sales Tax Act, 1990 read with Sales Tax Rules, 2006 and STGO No.35 of 2012 dated 30-6-2012 the registration was suspended. Hence this appeal before the Tribunal.

3. The learned AR has vehemently assailed the order of the learned Commissioner as unjustified and arbitrary. He contended that the registration of the appellant was suspended by the learned Commissioner on the basis of presumptions without bringing any material evidence on record. He pointed out that the FBR vide STGO No.35 dated 30-6-2012 has issued a uniform policy for suspension and blacklisting of sales tax registered persons under section 21(2) of the Sales Tax Act, 1990. As per the said STGO, if the Commissioner is satisfied that a registered person has issued fake

invoices, evaded tax or committed tax fraud, suspension of registration shall be made through a written order. Thereafter, the Commissioner shall issue a show cause notice within seven days of the issuance of such order and in case, after giving an opportunity of hearing the offence is established the order of blacklisting shall be issued within 90 days of the issuance of the notice of hearing. The learned AR stated that in the instant case the period of 90 days had already lapsed but no such order was passed by the Commissioner. Therefore, the suspension is void ab initio and illegal. Further submitted that black-listing as well as non restoration of registration is an extreme step having paralyzing effect on business of any commercial enterprise and on its financial reputation as well and this type of action should be taken as last resort after establishing the gross violations of main factors i.e. "(i) If registered persons is found to have committed tax fraud, (ii) Evaded tax and (iii) Registered person has failed to deposit the tax due on his supplies despite having recovered it from respective buyers". Incidentally, the learned AR argued that such action of black-listing or suspension of registration and none of the violations of any of the above referred incidences have been established in the instant case. Placing reliance on the judgment of the Tribunal reported as 2012 PTD (Trib.) 337 he prayed for cancellation of suspension order of the learned Commissioner. The learned DR, though supported the order of the learned Commissioner yet has not been able to displace the factual position narrated above.

4. After having heard the rival arguments and having perused the available record, we are in consonance with the contentions of the learned AR. The order of suspension was made on the basis of presumptions without bringing any material evidence on record by the Commissioner. Even the legal requirements as envisaged in STGO No.35/2012 cited supra have not been fulfilled, therefore, we are of the considered opinion that the suspension order merits cancellation. Consequently, the show cause notice dated 20-9-2012 as well as the order of suspension dated 14-9-2012 are declared void ab initio and are hereby annulled.

5. Order accordingly



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