

TaxHelpline2013/213

APPELLATE TRIBUNAL

STA NO.1202/LB/2012, Date of hearing : 25.02.2013. Date of order : 26.02.2013

**(MIAN MASOOD AHMAD), ACCOUNTANT MEMBER, (NAZIR AHMAD),
JUDICIAL MEMBER**

Applicant by : Miss Nida Malik, ITP. Respondent by : Ms. Fauzia Fakhar, DR

M/s I.M Steel Industries, Lahore. .. Appellant

Vs

The CIR, Zone-IV RTO; Lahore. Respondent

ORDER

The appellant has come up in appeal to assail the order dated 21-11-2012 passed by the learned Commissioner whereby appellant was blacklisted in terms of section 21(2) of the Sales Tax Act, 1990 (the Act) read with the relevant rules. The appellant feels aggrieved on account of passing of impugned order without any legal justification and also without providing the appellant a sufficient opportunity of being heard.

2. Facts of the case lie in a narrow compass. Pursuant to suspension of the appellant's registration under the Act, vide order dated 24-09-2012, proceedings u/s 37 of the Act were initiated calling upon the appellant to show cause as to why his registration should not be cancelled and why it should not be blacklisted. As per impugned order, the appellant did not properly attend the proceedings. The learned Commissioner accordingly proceeded to blacklist the appellant with immediate effect through the impugned order dated 21-11-2012.

3. The learned counsel tendering appearance of the appellant, opening her case, points out that blacklisting has followed the suspension of its registration which was subject matter of an appeal before this Tribunal in STA.No.1128/LB/2012. She explains that the said appeal was disposed of vide this Tribunal order dated 21-12-2012 whereby the suspension order and subsequent proceedings were set aside. She draws our attention particularly to the following paragraphs of our earlier elated 21-12-2012:-

4. We have heard the rival arguments and perused the case record and reached to the conclusion that learned CIR has erred seriously while suspending Sales Tax Registration of the appellant without requisite formalities of law. Superior courts have already condemned such action and taken serious note of administrative excesses. Honourable Lahore High Court Lahore vide its order dated 03.04.2012 in writ petition 6990/2012 M/s. J.M, Corporation Vs. Federation of Pakistan had directed to fulfill mandate of Article 10A of constitution of Pakistan and strict follow the provision of Act, Rule and STGO before taking such action.

5. The impugned order and subsequent proceedings if any on its basis as are in total violation of the orders of the Honourable Court are set aside forthwith. However, Revenue is free to proceed afresh against the appellant remaining strictly in four corners of law.

6. She vehemently contends that Revenue's order dated 21-11-2012 having been passed in pursuance of earlier suspension order was squarely covered within the meaning of term "subsequent proceedings" as used by this Tribunal in first line of paragraph 5 of the order dated 21-12-2012. The deservations regarding adjournment and non-attendance by the appellant are also vociferously denied by the learned counsel. It is accordingly prayed that the impugned blacklisting order should be declared illegal resulting in restoration of appellant's registration.

7. The teamed DR, taking up her turn, resists the prayer. She supports the impugned order for the reasons recorded therein. In her opinion, appellant's present appeal had been filed on 20-12-2012 and the matter of blacklisting was thus subjudice before this Tribunal at the time of passing of order dated 21-12-2012. She argues that if the Tribunal desired to interfere with the blacklisting order it, could have, and should not have, done so in explicit terms.

8. We have heard the learned representatives of the two parties and perused the available record. Having gone through our earlier order dated 21-12-2012, extracts from which have been produced above, we would readily agree with the pleadings made at the bar for the appellant. It is a cardinal principle of our jurisprudence, which has all along been upheld by the courts of law of this country, that an edifice built upon unlawful foundations has to crumble down and we do not intend to make appellant's case any exception. We have already declared the suspension of appellant's registration as unlawful the blacklisting having been done pursuant to the suspension of registration is to meet its fate of cancellation and we order so.

9. The appeal succeeds in the manner indicated above.



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