

Taxhelpline Case No. 157 of 2013

INLAND REVENUE APPELLATE TRIBUNAL

M.A (Stay) No.1000/LB along with S.T.A. No. 1041/LB of 2012, decided on 21st November, 2012. Date of hearing: 20th November, 2012

**Before Nazir Ahmad, Judicial Member and Sohail Afzal,
Accountant Member**

**Khubaib Ahmed for Appellant. nImtiaz Ahmed, , D.R. for
Respondent**

**Messrs ROYAL EXPORTS, FAISALABAD
Vs
C.I.R., ZONE-II, R.T.O., FAISALABAD**

ORDER

Titled miscellaneous application has been filed at the instance the assessee-appellant against the rejection of stay of the first appellate authority's order bearing No.CIR/Z-II/ST/724 dated 27-8-2012 for suspension of registration of, the appellant/registered person. Against the said order, the appellant has also filed appeal under section 46 of the Sales Tax Act, 1990 on 25-10-2012 in the office of the Appellate Tribunal Inland Revenue for regular hearing.

2. However, it is significant to state here that in the presence of the instant appeal and instead of granting stay, we opt to adjudicate the main appeal of the appellant/registered person on merit and deem it appropriate to be declared the said stay application infructuous.

3. Facts leading for disposal of the instant case are that a special team comprising Inland Revenue Officers, Faisalabad visited business premises of the appellant at their declared business address i.e. P-11, Kokab Plaza, Allama Iqbal Road, Faisalabad and found the same place as office and residence of Mr. Aman Ullah

Khan, Advocate. The team further observed that Mr. Khadim Hussain was present therein who informed that Mr. Aman Ullah Khan is at Lahore and this premises is being used by him since 1997 and denied to know the whereabouts of Messrs Royal Exports, Faisalabad. The visiting team further observed that lease agreement submitted at the time of registration in respect of address situated at Ganesh Mill Factory Area, Faisalabad was also found fake as the owner of property disowned the said lease agreement. It is, also observed by the authorities that the profile of appellant has shown fake/suspicious activity under Notification No. S.R.O. 283(I)/2011 dated 1-4-2011 as he has declared sales of above 300 million in last eight months. Further it has also been reported by the Directorate of Intelligence and Investigation, IR, Karachi vide its letter C.No.245/ADB/(I&I)/IR/2012/383 dated 12-6-2012 that the appellant is found involved in certain suspicious business activities. The learned CIR (Zone-II) called upon the appellant with a notice to show cause C.No. 93 dated Nil as to why his sales tax registration may not be suspended under section 21(2) of the Act read with Chapter-I, Rule 12 of the Sales Tax Rules, 2006 dated 5-6-2006 and Clause 'N' of Sales Tax General Order No. 3 of 2004 dated 12-6-2004 along with punitive action as warranted under law may not be taken against the appellant.

4. In response to show cause notice dated supra, the appellant filed written submission on 7-8-2012 and also requested for opportunity of being heard before taking any adverse action against him. However, the reply tendered by the appellant could not satisfy the learned CIR and he upheld the charges as contained in the impugned notice vide order No.724 dated 27-8-2012. Feeling aggrieved with this treatment, the appellant/registered person has come up in appeal before the learned Appellate Tribunal Inland Revenue.

5. The learned counsel on behalf of appellant has vehemently contented that the order was passed by the learned CIR on ex parte basis without giving any opportunity of being heard and without confronting the charges levelled against him. He further argued that if a registered person is not available on his declared address then

he should have been penalized under section 33(4) of the Act and his registration cannot be suspended on this score alone. Towards sanctity and veracity of business activities carried out by his client, the learned counsel further argued that the buyer and suppliers of the appellant are operative and showing hundred percent tax compliance level as available at FBR's website. He also argued that no supplies were made to any unregistered person hence; charge of violation of S.R.O 283(I)/2011 which is applicable in case supply is made to any person other than registered one also stands against the facts and law. At the end, learned counsel assailed that under the provisions of section 21(2) of the Act, the Commissioner can suspend the registration of a registered person only in case of any evasion of tax or in case fake invoices issued by him but these charges were never levelled in the impugned show cause notice and adjudging of the same in the impugned order renders the whole exercise beyond the scope, stance and contents of impugned show cause notice. Conversely, the learned DR appearing on behalf of department opposed the arguments of the appellant and supported the order of the learned CIR and reiterating the charges earlier levelled in the impugned notice as well as in the consequent order.

6. We have heard the arguments advanced by the rival parties and perused the relevant available record and provisions of law as well as case-laws submitted by the learned counsel during the court proceedings. We have observed that the learned CIR (Zone-II) has passed the impugned order by suspending the registration of the appellant without affording him with any opportunity of hearing despite clear provisions in the Clause 33 of the STGO No.3 of 2004 dated 12-6-2004 which laid down that if the Collector is satisfied that the person needs to be blacklisted or his registration suspended, he shall first issue notice to the registered person and give him an opportunity of being heard. It is well settled law that any order affecting the rights of the person without affording any opportunity of hearing and confronting the charges levelled against him is an illegal and void order. In support of his contention, the learned counsel furnished different reported judgments cited as 1987 SCMR 1840 (S.C.Pak), Writ Petition No. 6990 of 2012 (Lhr.H.C.) in the case of J.M. Corporation v. Federation of Pakistan

and others 2012 PTD (Trib.) 219 and the allied documents.

7. Having taken regard to the facts of the case in its entirety, and also going through the reported judgment referred supra, we have noted that it is well-settled principle of law that any exercise conducted without due process of law is illegal and unlawful and without jurisdiction as also laid down by the apex court of Pakistan. Keeping in view of the foregoing reasons, we have no ambiguity in our mind to declare that the order passed by the learned CIR Zone-II, Faisalabad dated 27-8-2012 on account of suspension of registration of the appellant/registered person is illegal, ab initio void and against the doctrine of natural justice which warrants to be overruled.

8. Since, we further observed that no body can be penalized without any proper adjudication and devoid of adjudging any liability against him, such kind of action by the tax functionaries is totally in defiance of law which is not permissible under any provisions of law of the land. Consequently, on the issue of black listing the department is directed to continue the verification of the invoices issued by the seller and the purchaser to know the actual position of the case and thereafter if the department finds that those are genuine and properly issued by both the parties then decide the case in accordance with law.

9. As a result, the appeal as well as the stay application filed by the appellant/registered person is disposed off to the extent and in the manner as indicated above.

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