

APPELLATE TRIBUNAL INLAND REVENUE, LAHORE
BENCH, LAHORE

STA NO.24/LB/2024

&

MA(Stay) No.85/LB/2024

M/s. Rie Metals, Lahore ...Appellant

Versus

The CIR, LTO, Lahore ...Respondent

Appellant by: Rana Usman Ghani, Advocate

Respondent by: Ms. Mahrugh Imtiaz, DR

Date of hearing: 05.01.2024

Date of order: 08.01.2024

ORDER

Ch. Muhammad Tarique (Accountant Member): The tiled sales tax appeal has been filed by the registered person (“**RP**”) directly before this Tribunal under section 46 of the Sales Tax Act, 1990 (“**the Act 1990**”) against the impugned order of suspension of sales tax registration dated 01.01.2024 passed under section 21(2) of the Act 1990 read with rule 12 of Sales Tax Rules, 2006 (“**the Rules 2006**”) by the learned Commissioner Inland Revenue, Zone-II, LTO, Lahore.

2. Brief facts of the case are that it was observed by the learned Commissioner that the RP had been the beneficiary of input tax against the bogus / fake sales tax invoices issued by

some allegedly fraudulent suppliers namely, M/s Beco Steel Re-Rolling (Pvt.) Ltd. and M/s Chaudhry Steel Re-Rolling Mills. The precise allegation against the RP, as per the impugned suspension order, is that both the aforesaid suppliers are registered as re-rolling mills who are engaged in manufacturing and supply of steel bars falling under the **HS Code 7204** but the RP has claimed to have received supplies of Lead Ingot / Lead Bars carrying **HS Code 7801** from the said suppliers, which products are allegedly not listed in the registration profiles of the said suppliers. The allegation is primarily based on reading of the information already available in the sales tax returns filed by the RP and the registered profiles of the suppliers under reference. The aforesaid piece of information already available on record has been taken by the learned Commissioner to constitute tax fraud by the RP in terms of the expression used in clause (37) of section 2 of the Act 1990 in as much as the RP has been charged of knowingly, dishonestly, deliberately and without any lawful excuse claiming input tax in respect of fake / flying Invoices issued by the fraudulent suppliers. That allegation or truly speaking a mere suspicion has in turn been taken by the Commissioner as a sufficient cause justifying suspension of sales tax registration of the RP, which for all practical purposes, signifies throwing someone out of business.

3. The RP being aggrieved of the above suspension order dated 01.01.2024 has filed appeal before this Tribunal on the strength of the following assertion of facts and grounds of appeal:

FACTS

“1. That the Appellant is a Private Limited Company duly registered with the Inland Revenue Department having Sales Tax Registration Number. 3277876127650 & NTN 7215004-1.

2. That the brief facts of the case are that a show cause notice for suspension and blacklisting was issued by the Respondent-Commissioner Inland Revenue ("CIR") issued u/s 21 (2) of the Sales Tax Act, 1990.

3. That in response to the show cause notice the appellant submitted its detailed reply and attended the proceedings along-with complete documentary evidences and supporting and supporting documents/details. evidence so submitted clearly proved that, (1) all suppliers of the appellant were active at the time of the transaction, (ii) compliance to the provisions of section 73 of the Sales Tax Act, 1990 was duly made, (iii) necessary sales tax that was claimed by the appellant as input tax was also paid to the suppliers as part of the price through crossed banking channels and (iv) evidence of physical movement of goods was also submitted.

4. That the learned respondent not being satisfied with the reply of the appellant, passed the impugned order C No. 7656 dated 01-01-2024 in the most capricious and arbitrary manner in as much he did not take into account the evidence submitted before him and proceeded on to suspend the sales tax registration number (STRN) of the appellant in a perfunctory manner.

5. That the impugned order C No. 7656 dated 01-01-2024 is illegal, void ab initio and without jurisdiction inter alia on the following: -

GROUND OF APPEAL

"1. That the findings given and inferences drawn in the impugned order passed by the learned respondent-CIR,

Zone-II, LTO, Lahore are against the law as well as the facts of the case.

2. That proceedings for suspension have wrongly been initiated and finalized without appreciating the evidence produced before him by appellant, and therefore, are liable to be quashed.

3. That the order passed by the learned CIR is liable to be cancelled as adequate & proper opportunity of being heard was not provided to the appellant and the facts as well as the legal provisions. Needless to highlight the respondent was under obligation to critically evaluate the evidence produced before him. Pinpoint deficiency if any and confront the same to the appellant, which was omitted to be done. This clearly proves that the principle of natural justice was audialterm partem was daringly flouted by the respondent.

4. That the order of suspension passed by the respondent is not sustainable as this is neither a reasoned order nor an outcome of fair and just exercise of statutory powers and is therefore, flagrantly violative of the express and mandatory provisions of section 24A the General Clauses Act, 1897.

5. That the impugned order is also liable to be cancelled on a single score that the same was passed on the date NOT FIXED for hearing. Reliance is placed on the case laws reported as 2019 PTD 1081 (Trib) & 2019 PTD 1118 (Trib).

6. That the powers under section 21 (2) of the Sales Tax Act, 1990 have been exercised without any material evidence on which the respondents would have reason to believe that registered person / appellant is involved in evasion of tax/mis-declaration.

7. That at the time of passing the impugned order neither any inquiry was conducted against the appellant under section 11 of the Sales Tax Act, 1990 nor investigation regarding evasion of tax was pending/finalized against the appellant hence, the impugned order is not sustainable in the eye of law.

8. That the impugned order has been passed in a flagrant violation of the relevant provisions of law as neither proper procedure has been followed by the respondent nor due consideration has been given to mandatory requirement of law.

9. That the impugned action of the respondents is confiscatory in nature and tainted with colorable exercise of power, harassment and highhandedness.

10. That the learned respondent has erred in holding in a summary manner that “the reply of the registered person is not satisfactory and it is concluded that his is just arrangement to claim the fake input tax adjustments” however, this is merely the presumption/ assumption of the learned respondent and the learned respondent has nothing to substantiate its claim. A suspension order that practically throws a person out of business cannot be made merely on presumption / assumption basis and in a perfunctory manner.

11. That the learned respondent has brushed aside the mandatory provisions of law and has totally ignored the facts as well as the circumstances of the case and has passed the order without appreciating the facts that the appellant is a proper manufacturer and all the purchases are duly being utilized in the manufacturing process therefore, without even

verification and completing the legal procedure sales tax of the appellant has been suspended.

12. That the order passed by the learned respondent is also liable to be deleted as the same has been passed in clear violation of laws laid down by the Honorable Higher Courts of Pakistan as the suspension can only be made only on two grounds [i.e. (a) if one has issued fake invoices or (b) he has otherwise committed tax fraud). However, in the present case of the appellant no such condition has been fulfilled and no order of fraud or fake invoices have been passed by the learned CIR therefore, the proceedings initiated / order passed is liable to be deleted. Reliance is placed on the case law reported as 2021 PTD 1813 (HC).

13. That the order passed by the learned respondent seems merely a disposal and it was passed in such a hurry that the learned CIR has totally ignored the legal provisions of the Sales Tax Act, 1990 and without proper establishing the willful/ deliberate default on the part of the appellant. This type exercise of authority renders the entire proceedings unlawful and hence, liable to cancellation. Reliance is placed on the case law reported as "2004 PTD 1179" (SC).

14. The appellant craves to add or alter any other grounds of appeal. Under the facts and in the circumstances of the case, it is respectfully prayed that the impugned order being declared void, ab initio and may kindly be cancelled. Resultantly, the sales tax registration of the appellant may kindly be restored as active and any other relief may kindly be granted as permissible under the law."

5. The case was taken up for hearing on 05.01.2024. The learned counsel vehemently contested the impugned order of suspension of registration as absolutely arbitrary, whimsical,

illegal and ab initio void both on facts and legal anomalies. At the legal plane, the AR contended that the order of suspension can only be made if (a) someone has issued fake invoices or (b) he has otherwise committed tax fraud. However, the AR maintained, the learned Commissioner has passed the order of suspension without establishing that the RP in any way was involved in tax fraud or issuing fake invoices. The AR emphasized that even there is no allegation of issuing fake invoices by the RP rather the entire charge is that the RP is a beneficiary of fake invoices issued by other persons. The AR further contended that the order of suspension is liable to be cancelled on another single score because the order was passed on a date which was not fixed for hearing. In this regard, reliance has been placed by him on the case law reported as **2019 PTD 1081 (Trib.) and 2019 PTD 1118 (Trib.)**. The AR also asserted that since neither adequate opportunity of hearing and explaining discrepancies if any in the evidence submitted by the RP was provided, nor a reasoned order has been passed, the impugned suspension order is ostensibly violative of express and mandatory provisions of section 24A of the General Clauses Act, 1897. At the factual level, the AR submitted that complete documentary evidence in support of the following facts was submitted before the learned Commissioner:

- (1) It was established that both the suppliers of the Rp were active at the time of the transaction;
- (2) Compliance to the provisions of section 73 of the Act, 1990 was properly made and payments were made to the suppliers through cross banking channels;
- (3) At the time of making payment on account of purchases, necessary sales tax that was claimed by the appellant-RP as input tax was also paid to the suppliers as part of the price;

(4) Evidence of physical movement of goods was also submitted.

The AR accordingly argued that, for arguments sake, even if it is presumed that the suppliers had not made payment of sales tax on corresponding transactions, the appellant-RP cannot be punished for the same. The AR further informed that Officer Inland Revenue (OIR)/Investigation Officer, Enforcement & Collection Zone-I, RTO, Hyderabad, has also issued summons to the RP for joining the criminal proceedings lodged against one M/s Unicorn Business Establishment, House No.27/8, Block-D, Unit No.05, Latifabad, Hyderabad who reportedly appears in the supply chain of M/s Beco Steel Re-Rolling Mills (Pvt.) Ltd. The AR apprised this Tribunal that complete documentary evidence has also been submitted before the IO that conclusively establishes that the input tax claimed on account of supplies received by the RP from M/s Beco Steel Re-Rolling Mills (Pvt.) Ltd., is absolutely justified, admissible and genuine. He further opined that the appellant-RP is being subjected to double jeopardy for something he has not done at all. On the one hand, the department has suspended its registration and on the other hand, an Officer Inland Revenue who even does not hold jurisdiction over its case is issuing summons for person appearance at Hyderabad for joining an inquiry that is nothing more than a fishing inquiry.

6. The learned DR appearing for the department supported the order of suspension mainly for the reason that there was no valid reason for supply of lead by the suppliers who were registered as steel re-rolling mills and as per their registrations were not engaged in supply of lead bars. The DR further pointed out that the RP has shown transfer of payments through RTGS to suppliers in Habib Metropolitan Bank Ltd., Karachi, however, the suppliers have not shown such account in their sales tax profiles

available on the FBR's Portal. Regarding failure on the part of the learned Commissioner to pinpoint deficiencies in the evidences produced before him by the RP and thereby, denying adequate / proper opportunity of hearing, the learned DR argued that Rule 12 of the Sales Tax Rules, 2006 empowers the Commissioner to make a suspension / blacklisting order if he has “**reasons**” to “**believe**” that the RP is involved in issuance of fake invoices and / or has committed “**tax fraud**”. The DR continued that it is the “**satisfaction**” of the Commissioner which matters and the said Rule even empowers the Commissioner to suspend sales tax registration “**without prior notice**”.

7. Before we dilate on the facts that have been brought on record, it seems worthwhile to give a close look to the law that governs the process of blacklisting and suspension of registration. Sub-section (2) of 21 of the Act 1990 is of paramount importance for understanding the fundamental legal dispensation on the subject. The same is accordingly reproduced hereunder:

21. De-registration, blacklisting and suspension of registration.

(1)

(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.

(3)

It is abundantly clear from the language of above section that the registration of the registered person can be suspended/

blacklisted when charge of tax fraud or issuance of fake invoices is established. However, it is an admitted position that the registered person of the instant case has been found involved in claiming input tax from the suppliers whose line of business was different from the product supplied. The RP was neither involved nor charged with “issuance of fake / flying invoices” which is one of the two paramount preconditions for pressing into service the provisions of sub-section (2) of section 21 of the Act *ibid*. Regarding the other essential condition justifying the extreme action of suspension of registration, the language used by the law is “the registered person is found to have committed tax fraud”, which signifies that mere allegation or suspicion of tax fraud cannot be invoked as a pretext for suspension of registration. The fact of tax fraud having been committed needs to be reasonably established in order to satisfy the test laid down by the legislature that “the registered person is found to have committed tax fraud”. Having carefully gone through the order of suspension, we have noticed that the learned Commissioner has conveniently ignored that the appellant-RP was not involved in issuance of fake/flying invoices rather he was only a beneficiary of the alleged fake invoices and, therefore, its case did not fall in the mischief of sub-section (2) of section 21 of the Act *ibid*. Further, mere allegation of tax fraud falls too short of the stringent test of “tax fraud is found to have been committed” provided in the said provision of law. In this view of the matter, we are strongly persuaded to hold that the action of suspension of registration on the part of the learned Commissioner is the outcome of considerations that are extraneous to the express provisions of law and, therefore, render the impugned suspension order liable to be cancelled on that score alone.

8. In order to reinforce our point of view dilated upon above, it also seems imperative to critically analyze the language of

relevant part of Rule 12 of Sales Tax Rules, 2006 (**“the Rules 2006”**) that has been extensively relied upon and quoted by the learned DR. The relevant excerpt from the said Rule reads as under:

“Blacklisting and suspension of registration. -Where the Commissioner or Board has reasons to believe that the registered person is to be suspended or blacklisted, 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:-

Having carefully gone through the above language of the Rule *ibid*, we understand that the key expressions **“reasons to believe”**, **“satisfied”**, **“fake invoices”**, **“committed tax fraud”**, and **“without prior notice”**, employed in the Rule need exhaustive discussion in the light of the principles laid down by the superior courts of the country in various cases. Needless to underscore that all the aforesaid expressions are of critical importance especially in view of the principle of law laid down in the honorable Apex Court's judgments reported as 2006 SCMR 129, 2017 SCMR 1136 wherein it has been clearly held that each

and every word of the law needs to be given full effect and redundancy cannot be attributed to a legislation.

9. The collective reading of Section 21(2) and Rule 12 of the Sales Tax Rules 2005 clearly shows that the power of suspension of Sales Tax Registration or blacklisting of register person vested with the Commissioner is neither absolute nor unfettered but has been clogged with the *sin qua non* conditions that the Commissioner is satisfied that the registered person has committed tax fraud or is involved in issuance of fake invoices. Neither the subject power can be exercised without adhering to existence of mandatory conditions nor the fundamental statutory conditions can be brushed aside, conveniently ignored or arbitrarily dispensed with. The relevant law is manifestly clear that the requirement of being "satisfied" on the part of a Commissioner is mandatory prior to framing criminal charges of issuance of fake invoices or committing tax fraud. The said provisions of the Act 1990 and the Rules 2006 necessarily entail an enquiry to be undertaken to collect material or evidence by the Commissioner to come to an objective satisfaction that the extreme action such as suspension or blacklisting of registration is called for. The term "**satisfaction**" and "**found**" employed in section 21(2) of the Act, 1990 and relevant rules also have material bearing and direct nexus with the qualification of issuance of fake invoices or committing of tax fraud that are *sin qua non* conditions for assuming jurisdiction of commencing proceedings for suspension of sales tax registration/blacklisting of a registered person. The term "**found**", does not mean mere guesswork, apprehension, suspect, imagination, assumption, presumption but means discovery, establishment and bringing on record objective, reliable, trustworthy and credible material evidence through scrutiny, probe, trial or audit of record having direct nexus to prove the real issuance of fake invoices or committing of tax fraud

through the subordinate authority and thereafter the Commissioner is to determine the authenticity, validity and correctness of such evidence to arrive at standard of satisfaction to suspend the registration of the registered person. Similarly, the subjectivity and mere opinion are not at par with the term “**satisfaction**” which must be objective, certain, reliable, trustworthy and based on credible and corroborated material evidence brought on record, demonstrated and manifest in the show cause notice and confronted to the registered person. The term “**satisfaction**” has been interpreted, dilated upon and judicially defined by the honorable Apex Court in a number of reported judgments including **PLD 2008 SC 663** (Muallana Atta Ur Rehman Sardar Umar Farong) **PLD 1976 SC 6**. Syed Saeed Hassan Pyar Ali, the operating part whereof reads as under:

“The terms “**satisfaction**” is by no means a term of art and appears to have been used in its ordinary dictionary meanings. Further “**satisfaction**” is the existence of a state of mental persuasion much higher than a mere opinion and when used in the context of judicial proceedings has to be arrived at in compliance with the prescribed statutory provision and other requirements. Far from being a subjectively or capriciously legal arrived at conclusion, it presumes observance of certain well-settled judicial principles and is a firm state of mind admitting of no doubt or indecision or oscillation. To be “satisfied” with a state of things is to be honestly convinced about it in one's own mind. According to Black's Law Dictionary apart from the “legal satisfaction” which is a term of art and connotes discharge of a claim, debt or legal demand, to satisfy in the ordinary sense is to convince. “Satisfaction evidence” has been explained as sufficient evidence meaning an amount of proof which ordinary satisfied an unprejudiced mind

reasonable doubt. In Corpus Juris Secundum word “satisfy” beyond a is held to be synonymous with “convince beyond a reasonable doubt and “satisfaction” has been explained as a state of mind, which connotes a sense of certainty, and conviction or release from suspense, doubt or uncertainty. Accordingly, to the Oxford English Dictionary “to satisfy” means to furnish with sufficient proof or information or to assure or set free from doubt or uncertainty to convince. "Entitlement according to Oxford English Dictionary refers to the determination of a person's right to a certain position, office or status based on the correct assessment of his claims in the light of the legal requirements and prescribed qualifications. According to the Stroud's English Dictionary, the expression “entitled to” used in relation to property has been described as most comprehensive and under it all kind of property will pass in which the person spoken of has any title at law or in equity. The word “entitled” like “vested”, prima facie, refers to the right, and not to the possession. According to the Oxford English Dictionary, word “entitled” had been used in the sense of furnishing with a title or giving a rightful claim to possession or designation etc. According to Black's Law Dictionary “to entitle” in its usual sense is to give a right or title. The word “reasonable” has been interpreted by this Court in the case of **Ellahi Cotton Ltd. v. Federation of Pakistan (PLD 1997 SC 582)** as a relative generic term difficult of adequate definition. It, inter alia, connotes agreeable to reason, comfortable to reason; having the faculty of reason; rational; thinking, speaking, or acting rationally; or according to the dictates of reason; sensible; just; proper and equitable or to act within constitutional bounds.”

10. Even at the cost of reiteration, we may record that the terms **“satisfaction”** and **“found”** used in the law under consideration have a direct nexus with committing of tax fraud and involvement of the registered person in issuance of fake invoices. The Federal Board of Revenue in exercise of delegated powers u/s 50 read with section 21(2) of the Act 1990 is neither competent to abridge nor allowed to enlarge the scope of the expression “satisfaction”, nor can Board associate extraneous qualifications and matters that are not stipulated by the Legislature in the parent statute. The Board, therefore, cannot prescribe and include extraneous concepts within the scope and meaning of **“committing tax fraud”** and “Issuance of fake invoices” provided in the Act 1990 as interpreted by the Courts. The plain reading of the sub- clause A to G of sub-rule a(1) of Rule 12 of the Rules 2006 also clearly manifests that these sub- clauses are subservient and supplementary factors which do not in any manner dispensed with enquiries and investigations that are required to be made by the Commissioner for satisfying himself that the accusations of issuance of fake invoice or committing of the tax fraud by the registered person are reasonably established. The mere fact of making purchases from a supplier whose sales tax profile does not mention the nature of product supplied and consequent claim of input tax against such purchases does neither constitute issuance of fake invoices nor committing of tax fraud defined under section 2(37) of the Act 1990.

11. The expression **“fake invoice”** has not been defined in the Act 1990. According to ordinary English dictionaries **“fake invoice”** means bogus, bogus, counterfeit, fabricated, fictitious, forged, fraudulent, mock, phony etc. in other words “fake invoice means non-genuine document which has been created to camouflage the reality and seems to be genuine whereas actually it is not. The term “fake invoice” and its scope has been

considered and interpreted and defined by this Honorable Appellate Tribunal in the reported judgments 2014 PTD (Trib.) 558 in case of CIR Vs. M/s Chenab Board while holding as under:

“The words “fake invoice” has neither collectively been defined in the Sales Tax Act, 1990 nor distinct and individual meanings of each word “fake” and “invoice” has been given therein nor any explanation has been enunciated in the rules made there under nor any definition of this expression is provided in defining clauses as given in section 2 of the Act. In the absence of the general or technical definition by the legislature of any word or particular connotations appearing in the Act or the Rules framed there under or of any judicial interpretation of that word with reference to the same statute or any other statute in parimateria, one has to resort to the dictionary meaning of that word because reference to standard dictionaries can be the sole assistance in assigning meaning of that word or words. The word “fake” has been defined by the Black’s Law Dictionary, 8th Edition to be “something that is not what it purports to be” and “to make or construct falsely” at its page 635. Any invoice duly issued by a registered supplier cannot be purported to be a fake document, once it is established that the same is duly incorporated in sales shown by the supplier in his summary statement and also declared in his sales tax monthly return for the period in question particularly in the cases where its payment is also transacted through banking channel as prescribed under the Act. Conversely, if a registered person holds a tax invoice which is not incorporated in the supplier's records or in its respect payment is also made clandestinely, it can be said that such person is making a fake business transaction. Any invoice that evidences a fake, fraudulent or sham transaction is known as a “fake invoice” and any

distortion in taxable supply tainted with “tax fraud” or “collusion” between buyer and seller renders the tax invoice defective and fake”.

12. The Honorable Lahore High Court in reported judgment **PLD 2013 Lahore 693** in the case of Messrs DG Khan Cement Company Lid Vs. The Federation of Pakistan and Others interpreted the scope and judicially defined the term “fake invoices” as under:

“The term “Fake Invoices” has not been defined in the Act but has the potential of covering a wide range of irregular and fraudulent transactions. Any taxable supply that is shame, collusive, based on tax fraud will necessarily render the invoice i.e., the material evidence documenting the transaction, to be false, collusive, and fraudulent. Fake Invoice is a legal term includes the popular market terminology of “flying invoice”. Hence, any invoice that evidences a fake, fraudulent or sham transaction is known as a “fake invoice”. Any distortion in taxable supply tainted with “tax fraud” or “collusion” between buyer and seller renders the tax invoice defective and fake.”

13. Now we would like examine the exact connotation of the word “**committed**”. Since section 21 prescribes punishment of suspending and/or blacklisting a tax payer’s registration, hence the word 'committed' must be construed accordingly. Once the Commissioner has reasons to believe that either fake invoices have been issued or tax fraud has been committed, he is required to conduct process of fair trial as enshrined in Article 10-A of the Constitution of Islamic Republic of Pakistan, 1973. There is no concept of fair trial without giving an opportunity of hearing. There is plethora of judgments preserving this fundamental right built around the legal maxim of audi alterampartem, in the recent case

of Altaf Ibrahim Qureshi v. Aam Log Ittehad(**PLD 2019 SC 745**) wherein the Hon'ble Supreme Court has held that right of hearing of a party is one of the fundamental principles of jurisprudence which is guaranteed by Article 10-A of the Constitution as assurance of fair trial and due process of law. It is very important to keep in mind that, in the tax jurisprudence, the initial burden to prove tax fraud lies on the department. The Hon'ble Supreme Court has upheld this view in numerous cases including Fancy Foundation Commissioner of Income Tax, Karachi (**2017 SCMR 1395**) and the honorable High Court has also expressed similar views in the case of Al-Hilal Motors Stores v Collector Sales Tax and Central Excise East (2004 PTD 868). Hence once again we reach to the conclusion that provision of due process of law must always be read into section 21 of the Act 1990.

14. It transpires from the above that a registered person can only be suspended if he has issued fake invoices or have otherwise committed tax fraud. Perusal of record shows that the appellant was not alleged to have issued fake invoices nor any allegation of committing of tax fraud was leveled against the appellant on a valid basis.

15. From a bare reading of definition of "tax fraud" given in section 2(37) of the Act 1990, it becomes clear that initial burden lies on the department to show that the registered person / person, knowingly, dishonestly or fraudulently and without any lawful excuse had done any act or caused any act to be done or has omitted to take any action or has caused the omission to take any action, falsifying or causing falsification the sales tax invoices in contravention of duties or obligations imposed under this Act or rules or instructions issued there under with the intention of understating the tax liability or underpaying the tax causing loss to Revenue. The initial burden. to prove that the provisions of tax

fraud were attracted lay on the department and in the instant case the department has not discharged its onus. The honorable Appellate Tribunal in areported judgment 2020 PTD (Trib.) 465in the case of M/s Hilal Chemical, Lahore Vs. CIR Appeals-II, Lahore has interpreted and determined the scope of the expression. “tax fraud” within the meaning of section 2(37) of the ST Act while relying on the judgments of the superior Courts. The operating part of the said judgment is reproduced as under:

“5.....Perusal of the definition leads us to the legal wisdom that legislative intention under section 2(37) of the Sales Tax Act, 1990 is not to opt for fishy or suppositional exercise and the initial burden lies on the department to show that an assessee knowingly, fraudulently and without any lawful excuse has done any dishonestly act or has caused to be done or has omitted to take any action or has caused the omission to take any action in contravention of duties or obligations imposed under the sales tax act or Rules or Instructions issued there under the intention of understanding the tax liability or underpaying the tax liability. Once this burden is discharged by the Department only then the burden is shifted to the assessee to establish that the act done was without any knowledge on his part of without any intention of dishonesty or fraud and was done without any lawful excuse. “Reliance is placed on 2015 PTD 1490 and 2002 SCMR 134.”

16. The Honorable Karachi High Court in the judgment reported as **2004 PTD 848 (KHC)** in case of Al-Hilal Motors Stores Versus Collector Sales Tax And Central Excise (East)has also interpreted and determined the scope of the expression “tax fraud” and candidly held that the same cannot be attracted on the basis of assumption and without discharging the initial burden of proof

which lies on the department, who is under obligation to bring some documentary evidence on record to establish the charge and cannot just mechanically shift the burden onto the accused registered person. Operating part of the said judgment reads as under:

“It is established principle of the law of taxation that an assessee can be subjected to tax under a provision of law, which is unambiguous and clear. There is no room for any intendment and there is no presumption as to tax. In the absence of any deeming provision the revenue required to establish that a transaction falls within the parameters of taxable supplies or in furtherance of any taxable activity, failing which the sales tax imposed on the basis of some assumption or presumption not warranted in law, shall always be struck down. In the present appeals it is apparent that except discovering certain cash-credits entries in the books of the appellants, the Revenue Officers have not been able to produce any material to show that the said amounts are in any way linked with the taxable supplies or with any taxable activities or represent an amount on account of any business activity. A perusal of the show-cause notice as well as material produced before us further shows that no case of any tax-fraud has been made out whereby the burden of proof can be shifted to the appellants. The learned two forums below have misdirected in placing the burden of proof on the appellants in terms of the provisions contained in section 2(37) defining the expression “tax-fraud” without realizing that in order to attract the above provision, the initial burden lied on the Department to show that an assessee, knowingly, dishonestly or fraudulently and without any lawful excuse has done any act or has caused to be done or has omitted to take any action or has caused to be done or has

omitted to take any action or has caused the omission to take any action in contravention of duties or obligations imposed under, this Act or rules or instructions issued there under with the intention of understating the tax liability or underpaying the tax liability. Once this burden is discharged by the Department, only then, the burden is shifted to the assessee to establish that the act done was without any knowledge on his part or without any intention of dishonesty or fraud and was done with any lawful excuse”.

17. Similarly the Honorable High Court Lahore in the case reported as 2015 PTD 2256 (CIR versus Ltd.) dilated upon and elucidated the connotation of “tax fraud” Tariq PolyPac and held that, for the purpose of controversy in hand, “tax fraud” means knowingly, dishonestly or fraudulently and without any lawful excuse making taxable supplies without getting registration under the Act 1990 or falsifying or causing falsification of the sales tax invoices. Tax fraud committed has civil as well as criminal consequences. The civil consequences of tax fraud are provided under section 21 of The Act which include suspension and blacklisting of registered persona Whereas criminal consequences of tax fraud are provided under clause 13 of section 33 of the Act. When a tax fraud is dealt as a criminal offence, it must be proved beyond reasonable doubt, as fundamental requirement of criminal law jurisprudence. However, when tax fraud is applied on the civil side in term of section 21 of the Act 1990 or Rule 12(5) of the Rules 2006, then the initial burden is on the department. Once, it is proved by, the department that tax fraud is committed, then to avoid civil consequences, it is for the registered person to show that he was duly registered at the time of making supplies and has not falsified or caused falsification of tax invoices.

18. Even the expression “**reason to believe**” employed in Rule 12 also casts a statutory obligation on the department to bring material evidence on record having rationale and direct connection with committing of tax fraud whereas purely subjective satisfaction or mere suspicious apprehension or guesswork does not stand at par with the term “**reason to believe**” which means believe must be honest and based on reason, relevant material and not on extraneous and irrelevant consideration. The Honorable Supreme Court of Pakistan in reported judgment **2005 SCMR 1166** in case of Collector of Sales Tax Versus M/s Mega Tech (Pvt.) Ltd held that reasonable belief of an officer must have direct nexus and material bearing on the strong circumstances for formation of such opinion. Indeed the legislature has used the expression ‘reasonable belief’ and not a mere suspicion, or hunch and apprehension. Recently Honorable Lahore High Court in reported Judgment **PLD 2021 Lahore 411** in case of Sheikh Shahid Jamal Vs. National Accountability Bureau and others very comprehensively interpreted and dilated upon the meaning, scope and implication of connotation, “reason to believe”. The operating part of the Judgment is as under:-

20. It is thus the evident that law recognizes the distinction between “belief” and “suspicion” which is also understood in the English language. The former connotes “convention of the truth of some statement or the reality of some being or phenomenon especially when based on examination of evidence” In contrast, “suspicion” means “the act or an instance of respecting something wrong without proof or on slight evidence. “6 in *Shaaban bin Hussien and others v. Chong Fook Kam and another* [1969] All ER 1626 (PC), the Privy Council explained that “suspicion in its ordinary meaning is a state of conjecture or surmise when proof is lacking; “I suspect but I cannot prove, “while in *Hunter et al v.*

Southern, [1984] 2 SCR 145, the Supreme Court of Canada ruled that “reasonable ground to believe” is “the point where credibly-based probability replaces suspicion”.

21. Salisbury's Laws of India explains:

“A person is said to have ‘reason to believe’ a thing, if he has sufficient cause to believe that thing but not otherwise. The term ‘reason to believe’ is not a matter of purely subjective satisfaction. The belief must be of an honest and reasonable man. It must be held in good faith and this faith must not be merely pretense. There must be relevant material to sustain such a belief and must not be based on mere suspicion, gossip or rumor. ‘Reason to believe’ suggests that there must be prima facie material even if such material is not precise or absolutely certain without any possibility of doubt. However, the belief must be that of an honest and reasonable person based upon relevant materials and circumstances... Suspicion or doubt may not be raised to the level of ‘reason to believe’. Whether there was sufficient cause to have reason to believe is a question of fact.”

22. K. Munivelu v. The Government of India and others (AIR 1972 AP 318) the Andhra Pradesh High Court held that “reasons to believe” means conclusion on the basis of the information that a thing, coming to a final condition, statement or a fact exists.”

23. Federal Court in Pakistan considered the phrase “reason to believe” in (Mourvi Fazalul Qader Choudhury v. Crown (PLD 1952 FC 19) and approved the following observations of the High Court:

“I think it is not enough to show that there is reason to suspect that the articles found have been stolen or

fraudulently obtained. Something more is required and that something is 'reason to believe', 'belief' being a conviction of the mind arising not from the actual perception or knowledge but by way of inference of evidence received or information derived from others. It falls short of an 'absolute' certainty because the accused, in accounting for his possession, may be able to show that the grounds upon which it is based are unsubstantial."

24. Similarly, Ch Abdul Malik v. The State (PLD 1968 SC 349), the Hon'ble Supreme Court of Pakistan observed:

"Reasonable grounds" is an expression which connotes that the grounds be such as would appeal to a reasonable man for connecting the accused with the crime with which he is charged, 'grounds' being a word of higher import than 'suspicion'. However, strong a suspicion maybe it would not take the place of reasonable grounds. Grounds will have to be tested by reason for their acceptance or rejection."

25. Again, in Chaudhry Shujat Hussein v. State (1995 SCMR 1249), the Supreme Court held: "The term 'reason to believe' can be classified at a higher pedestal than mere suspicion and allegation but not equivalent to prove evidence. Even the strongest suspicion cannot transform in 'reason to believe'".

26. The importance of distinguishing between "reasonable suspicion" and "reasonable grounds to believe" lies in the fact that "they set different standards for judicial assessment of whether a legal threshold has been met in a particular case. In the former it suffices if the concerned person thinks that there is a possibility, which is, is, more than fanciful, that the relevant facts exist. "8 On the other hand, the standard

applicable to “reasonable grounds to believe” has both an objective and subjective facet. “The person concerned must not only subjectively believe that the standard has been met, but the grounds must be objectively justifiable in the sense that an ordinary prudent person in his place would conclude that there were indeed reasonable grounds.”

19. It is a well-established principle of law that a party making an allegation must bring material evidences to prove the same but neither any allegation of tax fraud was leveled on some valid basis in the show cause notice nor the same has been demonstrated in the impugned suspension order. Therefore, the impugned suspension order is found to be patently illegal and void ab initio. It is also well settled law that adjudication based on mere presumption of fact is not sustainable under Article 117 read with Article 118 of Qanoon-e-Shahadat Order, 1984. Resultantly, the subject suspension order is framed in absolutely deviation from the mandate of section 21(2) of the Act 1990 and have not legal sanctity. The Hon'ble Supreme Court of Pakistan in case of Izhar Alam Farooqi v. Sheikh Abdul Sattar reported as 2008 SCMR 240 hold that “if a mandatory condition for the exercise of a jurisdiction before Court, Tribunal or Authority is not fulfilled, then the entire proceedings which follow become illegal and suffer from want of jurisdiction. Any order passed in continuation of these proceedings in appeal or revision equally suffers from illegality and is without jurisdiction” Reliance is also placed on the reported judgment including 2018 PTD 2233 (Trib.) (M/S COSMOS International vs. CIR), (2023) 127 TAX 19 (Trib.) (M/s Button & Zip Center vs. CIR), (2021) 123 TAX 219 (Trib.) (M/S RAD Enterprises vs. CIR) and on unreported Judgments in STA no. 295/LB/2021 (Mr. Shakir Ullah Prop: M/s. Uaman Textiles vs CIR)&STA No.427/LB/2021 in case of M/S IZU Traders vs. CIR, wherein the identical suspension of sales tax registration and

subsequent blacklisting was disapproved and appeal of the appellant was allowed and the same are squarely applicable to the appellant case and the appellant is entitled to the same relief as a matter of consistency.

20. The honorable Supreme Court of Pakistan in a judgment reported as 2022 PTD 727 (SC) (CIR vs Packages Limited) has recently pronounced that "Federal Board of Revenue, must act fairly in dealing with taxpayers and to abide by the law governing it. If any benefit accrues to taxpayers under the law, it must not be withheld and the assessee and its own time and resources should not be needlessly wasted. This frivolous litigation also wasted the time of the Tribunal, the High Court and of this Court, time which would have been better spent in resolving legitimate disputes". Similar verdict has been expressed in the judgment reported as 2022 SCMR 1240 in case of M/s HNR Company (Pvt.) Ltd wherein it is held that "Inland Revenue should act fairly toward taxpayers, gain their confidence and encourage these paying taxes and expend its time, money and effort against those who do not. The recent closure of tab of Credit Note on the FBR e-portal and depriving the appellant from statutory right of adjustment of sales returns conferred u/s 9 of the Act read with rule 19, 20 & 21 of Sales Tax Rules, 2006 arbitrarily, mechanically, vindictively and capriciously is also inconsistent with past practice, history of the Act and best trade and accounting practices". The honorable Karachi High Court in a reported judgment 2002 PTD 955 in the case of Super Industries Ltd. Vs CBR ruled that "one of the cardinal principle of tax law is that the Revenue should be consistent in its practice and version if an assessee or a product is given a particular treatment over course of a long period, then the Revenue should continue the same even if the assessee or the product is allowed any exemption/benefit or there is any enhancement of reduction in the rate of tax. There is another

cardinal principle of the law of taxation that an assessee should know his statue or the character and status or tile character and status of his product, viz-a-viz, the charge-ability of the tax. The Revenue should not be allowed to take inconsistent and changing version as such indiscipline in realm of taxation is always injurious and hazardous to thehealth of economy, industry and business. We are, therefore, persuaded to agree with the contentions of Mr. Muhammed Ali Syed that the Revenue cannot be allowed to resort to inconsistent practices merely with the change in the chargeability or exemption of a tax”.

21. We are also in agreement with the learned AR that by not providing adequate opportunity of hearing and failing to properly appreciate the available evidence, the learned Commissioner has flouted the mandatory provisions of section 24A of the General Clauses Act, 1897. These omissions render the proceedings undertaken by him as unlawful and illegal. Regarding the revenue’s contention of the Commissioner’s power regarding suspension of registration even “without prior notice”, it is sufficient to mention that taking adverse action without notice would also militate against the Article 10A of the Constitution of Islamic Republic of Pakistan, 1973 which has enshrined the fundamental right to fair trial of every citizen of Pakistan.

22. On facts, we have examined the complete folder containing copies of relevant bank statements, and invoices to notice that the RP did make compliance of section 73 of the Act 1990. The fact that the account from which payments were made has not been mentioned in the registration profile, may carry some other consequences but does not per sedisentitle the RP to claim the requisite input tax for which he has made payments to the suppliers through crossed banking channels. The other consideration taken into account by the learned Commissioner

that the suppliers, as per their registration profiles, are not engaged in lead products, is also of no avail to the revenue because a registered person or taxpayer cannot be expected to confine his activities to only one line of business as per wishes of the tax collector. It is a fact of common knowledge that the business and economic world present a fast moving phenomena and the business people, depending on the circumstances, keep switching on to more profitable ventures. We see a lot of force in the AR's contention that processing / recycling of lead is a simple process that can be undertaken by installing a small furnace, which fact should have been verified by the department at the material time through spot visits which was omitted to be done. In the presence of clear evidence that payment on account of purchases including sales tax was made by the RP through crossed banking channels, the appellant-RP cannot be penalized for the misdeeds, if any, committed by others appearing in the supply chain. We are also not persuaded by the illogical argument of revenue that mere non-mentioning of a bank account in the sales tax profile (wherefrom payments were made in compliance to section 73 of the Act 1990) is a sufficient cause to make an inference that payments were made against fake invoices.

23. We also cognizant of the fact that suspension of a registered person is an extreme step having paralyzing effect on business and on its financial reputation as well. Such action should be taken as last resort after establishing the gross violation of main factors. Due to sensitivity and severity of extreme action of suspension and blacklisting the legislature assigned the powers of suspension and blacklisting u/s 21 of the Act to a senior officer i.e. a "Commissioner inland Revenue". The honorable Appellate Tribunal in a reported Judgment (2023) 127 TAX 179 (Trib.) in the case of M/s Data Fabrics, VS CIR held that where a separate procedure has been provided in section 11 of the Act to deal with

the subject matter then the same should be adopted for assessment of sales tax liability and imposition of penalty u/s 33 and default surcharge u/s 34 of the Act and extreme action of suspension of sales tax registration in the presence of available alternative statutory procedure is totally unjustified. 23. The upshot of the above discussion is that the entire edifice of suspension of sales tax registration order is founded upon assumption & presumption, and suffers from grave legal, factual and procedural infirmities besides being an outcome of abuse of process, authority & law and, non-reading & misreading of available evidence. Hence, the whole exercise does not have any legal effect and impugned suspension order is not sustainable as being devoid of legal and factual merits. For the same reasons, summons dated 23.11.2023 issued by the Investigation Officer, RTO, Hyderabad that aims at conducting fishing inquiries on the subject matter in respect of this appellant on account of M/s Unicorn Business establishment, loses its relevance.

24. As a sequel to above, the appeal is allowed and the impugned order for suspension of sales tax registration of the appellant-RP is vacated/ canceled. Accordingly, the respondent is directed to forthwith activate the sale tax registration of the appellant-RP.

25. Since, the appeal of the RP has been accepted in earlier part of this order, therefore, the instant miscellaneous application seeking grant of stay is rendered in fructuous. The same stands disposed of accordingly.

(CH. MUHAMMAD TARIQ)
Accountant Member

(TARIQ IFTIKHAR AHMED)

Judicial Member