

IN THE HIGH COURT OF SINDH AT KARACHI

Constitution Petition No.D-5428 of 2024

Date

Order with signature of Judge

PRESENT:

Mr. Justice Muhammad Junaid Ghaffar
Mr. Justice Mohammad Abdur Rahman

PRIORITY CASE:

1. For hearing of CMA No.23895/2024.
2. For hearing of main case.

Dated; 17th January 2025

Mr. Aqeel Ahmed Khan, Advocate for Petitioner.

Mr. Kashif Nazeer, Assistant Attorney General.

Mr. S. Ahsan Ali Shah, Advocate for Respondent No.2.

*.~*~*~**

ORDER

Justice Muhammad Junaid Ghaffar, J: Instant Petition was filed by impugning a suspension order of Petitioner's Sales Tax Registration dated 10.10.2024 and on 28.10.2024 notice was issued to the Respondents as well as D.A.G. and on 04.11.2024 Mr. S. Ahsan Ali Shah, Advocate filed vakalatnama on behalf of the concerned Commissioner and sought time to file comments. On 18.11.2024, he once again sought adjournment to file comments. However, in the meantime on 14.11.2024 Respondent passed another order, whereby the Petitioner was blacklisted as well.

2. Today, we have confronted the Respondent's Counsel, as to why the blacklisting order was passed after filing of Petition and issuance of Notice. In response, he submits that there was no restraining order of the Court, whereas there are certain time limits, within which the blacklisting order is to be passed. However, we are not impressed with such argument, as in that case this Court would be compelled to pass restraining order(s) in every like case and propriety demands that Respondent ought to have shown restraint in passing the blacklisting order once they had entered appearance before this Court. Moreover, the time limit for passing of a blacklisting order is 90 days and there was no occasion to pass such order hurriedly. Secondly,

Respondents should have filed comments immediately without seeking adjournment on two dates as above as this matter requires urgent attention due to suspension of registration. It is also a matter of record that in the pre-suspension notice neither tax fraud has been alleged nor using fake invoices; rather, it is the case of the Respondents that the Petitioner is not available on the given address. Hence *prima facie* the suspension order passed under section 21(2) of the Sales Tax Act, 1990 appears to be without lawful authority and jurisdiction.

3. It may further be observed that primarily Section 21 of the Act in question is to facilitate de-registration of sales tax registered persons. It is not meant merely for suspension or blacklisting of a sales tax registration. Subsection (2) caters an emergent situation, whereby suspension of sales tax registration is inevitable, pending final de-registration. It is not that without finalizing the de-registration proceedings, the suspension / blacklisting can be continued for an indefinite period. Needless to state that exercise of such powers under section 21(2) of the Act are to be exercised as interpreted by this Court in the case of ***Saleem Ahmed***¹.

4. It further appears that Subsection (4) of Section 21 of the Act provides that when the Commissioner has reason to believe that a registered person is engaged in issuing fake or flying invoices, claiming fraudulent input tax or refunds, *does not physically exist or conduct actual business*, or is committing any other fraudulent activity, then the *refund or input tax adjustment* of such person can be blocked and the concerned Commissioner can be directed having jurisdiction over the registered person to proceed further and take appropriate legal action. Here in this matter, pre-suspension notice and the order of blacklisting primarily falls within the contemplation of subsection (4) of section 21 of the Act as it is the case of the Respondents that the Petitioner is not available on the given address, or is not conducting the stated business. However, the action initiated

¹ Saleem Ahmed v Federation of Pakistan (2021 PTD 1813)

against the person is under section 21(2) of the Act, whereas neither tax-fraud nor use of flying invoices is alleged. It seems that the Respondent department by itself is not clear as to which subsection is to be invoked on immediate basis before the registration is cancelled or registered person is de-registered. Therefore, the matter requires to be remanded to the concerned Commissioner / officer, who has already issued a notice under Section 21(2) of the Act to proceed further in terms of Section 21 of the Act by issuing a notice under section 21(1) or for that matter, under section 21(4), *ibid* and finally decide as to whether the registered person in question is to be de-registered finally or the refund or input tax is to be blocked. It is so ordered, whereas the concerned Commissioner shall proceed further in accordance with law and after considering all legal and factual aspects of the matter. Needless to state that an opportunity of hearing shall be provided to the Petitioner. During this period, in view of the above facts and circumstances of the case as well the conduct of the Respondent which is not at all appreciable, suspension order dated 10.10.2024 and blacklisting order dated 14.11.2024 are hereby suspended.

5. With these observations, instant Petition stands disposed of. Let copy of this order be issued to the Respondents for compliance.

JUDGE

JUDGE

Farhan/PS
