

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
C. P. No. D - 1076 of 2025

Date

Order with signature of Judge

Priority:

- 1) For orders on office objection No.16.
- 2) For hearing of CMA No. 558/2025.
- 3) For hearing of main case.

18.03.2025.

Mr. Ovais Ali Shah, Advocate for the Petitioner.

Pursuant to order passed on 13.03.2025, Mr. Zahid Masood, Chief Commissioner CTO, Inland Revenue, Karachi is in attendance along with his Counsel Mr. Ameer Nausherwan Adil who has filed comments along with Vakalatnama.

Through this Petition, the Petitioner has impugned an Order in Revision (wrongly mentioned as review order) dated 07.03.2025, whereby the Petitioner's Revision Application under Section 21(5) of the Sales Tax Act, 1990 has been disposed of merely on the ground that the concerned Commissioner after suspension of the sales tax registration has initiated black listing proceedings which are pending, hence, no final revisional order could be passed in respect of suspension of sales tax registration as the said proceedings have not yet reached its logical conclusion. At the same time the Petitioner has been asked to approach the concerned Commissioner for finally deciding the blacklisting proceedings.

We are afraid this contention of the Chief Commissioner prima facie does not appear to be correct inasmuch as there is only one remedy against an order of suspension of sales tax registration passed under Section 21(2) of the Act in question by way of a revision, and it is against the order of suspension and blacklisting independently and not conjunctively as interpreted by the Chief Commissioner. Moreover, a registered person cannot be kept remediless against an order of suspension pending final decision on the issue of blacklisting. It is also a matter of fact that for suspension of a sales tax registration a pre-suspension notice is issued, whereas for blacklisting purposes a separate show cause

notice is issued. Therefore, this stance of the Respondents is also not justified. It is further noted that earlier the suspension was impugned by way of petition No-D-697 of 2025 and petitioner was confronted as to availing the alternate remedy of revision and the Court was informed that the Chief Commissioner is not passing any orders. The said petition was disposed of on the assurance of the Chief Commissioner / Commissioner that a final speaking order will be passed within a week's time. Thereafter the impugned order in revision has been filed whereby no final decision has been taken. This conduct of the Chief Commissioner, if not contumacious, then at least is an attempt to deceive the Court by unnecessary dragging the matter and leaving the Petitioner remediless till such time the blacklisting proceedings are finalized. He has been vested with these revisional powers to redress the grievance of aggrieved taxpayers and not to drag them with such orders.

In an earlier Petition we have also passed an order in C. P. No. D-5428 of 2024 on 17.01.2025 in respect of Section 21(4) of the Sales Tax Act, 1990, which reads as under:-

- "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 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 he 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.

It is a matter of concern that on the one hand the provision of appeal against a suspension order has been omitted by way of Finance Act 2024 and instead a revisional authority has been created under Section 21(5) *ibid*; but the authority itself does not want to work and decide the issue of suspension on the pretext that the blacklisting is still pending. Such conduct of the Revisional Authority does not appear to be in consonance with the very provision of Section 21(5) read with Section 21(2) of the Act in question. If that is so, then they are barred from raising any objection as to availing alternate remedy in such matters.

We intend to initiate proceedings against the Chief Commissioner if we are not satisfied with his conduct and the response while finally deciding the petition. Accordingly, the Respondent's Counsel as well as the Chief Commissioner are directed to come prepared as we intend to decide the issue finally regarding the exercise of jurisdiction of the Chief Commissioner in such a manner. However, till then, the impugned suspension order dated 14.02.2025 available at page 47 shall remain suspended, whereas the concerned Commissioner shall maintain status quo in respect of blacklisting proceedings till such time the petition is finally decided.

To come up on **15.04.2025** along with C. P. No. D-27/2025 when the Chief Commissioner shall be in attendance.

ACTING CHIEF JUSTICE

J U D G E

Nasir/