

**APPELLATE TRIBUNAL INLAND REVENUE OF PAKISTAN
DIVISION BENCH, MULTAN**

**STA No. 251/MB/2024
M.A(STAY) No.507/MB/2024**

M/s Bright Coal Enterprises, Layyah
STRN 3277876327965

...Appellant

Versus

CIR, RTO, Multan

...Respondent

Applicant by : Mr. Muhammad Imran Ghazi, Advocate
Mr. M. Naseer-ud-Deen Hamayoun, Adv
Respondent by : Mr. Mashooq Hussain, DR

Date of Hearing : 25.06.2024

Date of Order : 26.06.2024

ORDER

Muhammad Jamil Bhatti (Member): The above-titled appeal has been filed by the registered person before this Tribunal under section 46(1)(b) of the Sales Tax Act, 1990 against the impugned order of Suspension of Sales Tax Registration vide Order No. CIR/MNZ/RTO/2024/10279 dated 31.05.2024, passed under section 21(2) of the Sales Tax Act, 1990 (**The Act, 1990**) by the learned Commissioner Inland Revenue, Multan Zone has been challenged on the grounds set forth in memo of appeal. It rendered the registration of appellant liable to be suspended / blacklisted. On the basis of these facts, the registration of the appellant was Suspended vide impugned order in terms of section 21(2) of the Act, read with Rule 12(b) of the Sales Tax Rules, 2006.

2. Mr. Muhammad Imran Ghazi, Advocate alongwith Mr. Muhammad Naseer-ud-Deen Hamayoun, Advocate appeared on behalf of the appellant/registered person and Mr. Mashooq Hussain, DR represented the tax department.



3. The learned AR at the very outset challenged the powers of Commissioner Inland Revenue, Multan Zone and urged that as per Jurisdictional Notification F.No.57(2)Jurisdiction/2016/196747-R dated 09.01.2024, the jurisdiction of appellant falls with Commissioner Inland Revenue, Dera Ghazi Khan Zone. It is further submitted by the learned AR that the impugned suspension order and further proceedings for blacklisting are void ab initio, illegal and unlawful in the absence of assumption of valid jurisdiction in the light of Section 30 and 31 of the Sales Tax Act, 1990. The learned AR further contended that the suspension order didn't reflect any reasons as required under Section 21 of the Act, 1990 and in Rule 12 of the Rules, which was in depravity to 24A of the General Clauses Act, 1897. The learned AR further argued that upon careful examination of the suspension/blacklisting order, it is evident that the suspension/blacklisting was carried out without any legally recognized evidence of tax fraud or tax evasion as stipulated in Section 21 of the Ordinance, 2001. The learned AR further asserted that the appellant was not granted an opportunity for a hearing, and even the suspension/blacklisting order was not served upon the appellant. This is clear violation of Article 10A of the Constitution of Islamic Republic of Pakistan, 1973. After insertion of Article 10A in the Constitution of Pakistan 1973, "fair trial" and "due process" are fundamental rights of every citizen for determination of his civil rights and obligations. Before suspension of the sales tax registration of the appellant the reason should be confronted and be given an opportunity of being heard.

4. We have heard the both the parties and perused the relevant record. The pivotal issue involved in the instant appeal is as to whether Commissioner Multan Zone has valid jurisdiction on the cases or persons in areas falling within Civil Division Dera Ghazi Khan comprising districts namely D.G.Khan, Muzaffar Garh, Layyah & Rajanpur. The Board of Revenue vide Notification F.No.57(2)Jurisdiction/2016/196747-R dated 09.01.2024 clearly define the areas and vested the powers to the offices of Commissioner Corporate Zone, Commissioner Multan Zone and Commissioner Dera Ghazi Khan Zone with certain cases or classes of



cases, persons or classes of persons and territorial jurisdiction. It is imperative to address the fundamental issue of jurisdiction, which is an essential aspect of the legal authority to adjudicate. The Sales Tax Act, 1990, under Sections 30 and 31, delineates the powers and functions of the Commissioners Inland Revenue (CIRs) with respect to their specific territorial jurisdictions. The Act, in its wisdom, ensures that the exercise of powers and performance of functions by the CIRs are confined within the boundaries of their appointed zones to maintain order and prevent administrative chaos. The appellant, conducting business in Layyah, therefore, apparently seems to be fall under the jurisdiction of the Commissioner Inland Revenue, Dera Ghazi Khan Zone, as per the relevant notification. This notification is a manifestation of the statutory authority vested by the Federal Board of Revenue and is binding in its application. The jurisdictional parameters set forth by the FBR are not merely administrative directives but are statutory commands that define the scope of each CIR's legal authority.



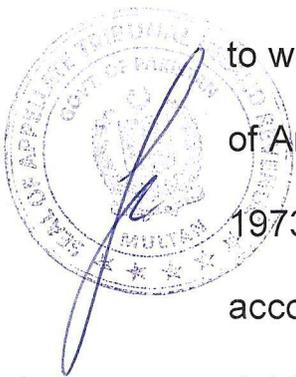
5. It is a well-established principle of law, as enshrined in the maxim "*nemo dat quod non habet*," that one cannot give what they do not possess. Apparently, the Commissioner Inland Revenue, Multan Zone, unequivocally lacks the jurisdiction over the appellant, who is registered in the territory of the Dera Ghazi Khan Zone. The action of suspension of STRN by the CIR Multan Zone is not a mere procedural irregularity that can be remedied or waived but is an incurable defect that strikes at the very heart of the legal authority to act.

6. It is trite law that exercise of jurisdiction by an authority is a mandatory requirement and its non-fulfillment would entail the entire proceedings to be *coram non-judice*. When the statute specifically provides and vests jurisdiction in a particular Court, forum or authority, an attempt by any other Court, forum or authority to take cognizance of the matter or to initiate any proceedings, would render such proceedings void ab-initio and of no legal effect. All the authorities performing functions under any

statute must conduct themselves strictly within the domain and jurisdiction vested in them under the law and not otherwise. All such actions which have been initiated on the basis of such defective jurisdiction cannot be sustained, and all subsequent actions taken purportedly on the basis of such defective jurisdiction are also liable to be declared illegal, void ab initio as if the same were never initiated. Guidance is sought from the case titled Mansab Ali v. Amir and 3 others reported in **PLD 1971 SC 124** wherein the Hon'ble Supreme Court has observed as follows:

"It is an elementary principle that if a mandatory condition for the exercise of jurisdiction by a Court, tribunal or authority is not fulfilled, then the entire proceedings which follow become illegal and suffers from want of jurisdiction. Any order passed in continuation of these proceedings in appeal or revision equally suffers from illegality and, are without jurisdiction. The learned Advocate General fully supported this view and asked for dismissal of the appeal."

7. Furthermore, the pivotal issue involved in the instant appeal is as to whether rule 12(i)(a) of Sales Tax Rules, 2006 offends the provisions of Article 10A and 18 of the Constitution of Islamic Republic of Pakistan, 1973 and impinges upon the right of the appellant to be treated in accordance with law and by due process of law as well as affects the right of the appellant to conduct trade and business as enshrined in Article 18 of the Constitution. This specific question came before the Hon'ble High Court in the case titled as "M/s Imran Ali Lubricants Vs Federation of Pakistan etc"(2018 PTD 1042) wherein the rule 12 to the extent that it provides for suspension of registration of a registered person without prior notice was held to be declared ultra vires the Constitution as well as the main enactment and was struck down in the following manner:-



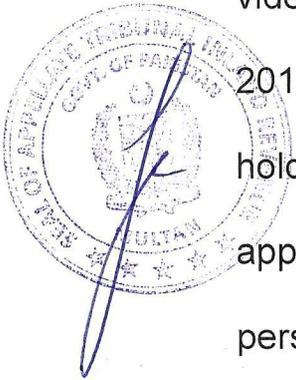
“19. Besides, it is an immutable principle that in all proceedings whether judicial or administrative, the principles of natural justice have to be observed if the proceedings might result in consequences affecting the person or property or other right of the parties concerned. Therefore, where a person is empowered to take decisions after factual investigation into the facts which would result in consequences affecting the person, property or other right of any other person, then the courts have inclined generally to imply that the power so given is coupled with a duty to act in accordance with the principles of natural justice and fairness. [The University of Dacca through its Vice-Chancellor and the Registrar, University of Dacca v. Zakir Ahmed (PLD 1965 Supreme Court 90)].

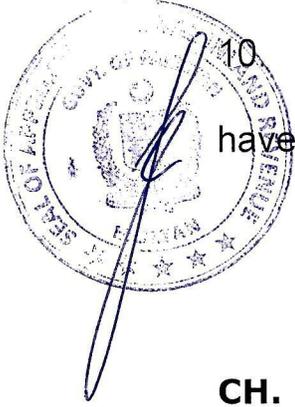
20. Undoubtedly the power of suspension of registration without prior notice is unlawful and impinges upon the rights of the petitioners to be treated in accordance with law and to be afforded due process of law.”
(Emphasis supplied)”

The ratio decided by the Hon'ble High Court in above judgment, is subsequently upheld by the Division Bench of the Hon'ble High Court vide its order dated 14.03.2019, in ICA No.255820 of 2018 reported as 2019 PTD 1213. In view of the settled legal position, we are, inclined to hold that the suspension order passed without prior notice to the appellant and without providing hearing opportunity to the registered person which is unsustainable in the eyes of law and against the maxim *Audi Alteram partem*.

8. In view of the above, the appeal of the appellant is accepted and the impugned suspension order No.CIR/MNZ/RTO/2024/10279 dated 31.05.2024 and show cause notice for blacklisting are vacated and further proceedings for blacklisting are suspended with the direction to the respondent / department to restore the sales tax registration number of the appellant. Further, the Department is also directed to settle the issue of jurisdiction of the taxpayer in the light of superior courts judgements cited above.

9. As main appeal has been decided in the manner indicated above, hence stay application has become infructuous.





10. It is certified that instant order consisting of 06 (six) pages and all have been signed.

-Sd-

CH. MUHAMMAD AZAM
Member

-Sd-

MUHAMMAD JAMIL BHATTI
Member

Copy of the bench order forwarded to

1. The Appellant *M/S. Bright Coal Enterprises*
2. The Respondent *Layyah*

BY ORDER

28.6.24
ASSISTANT REGISTRAR
Appellate Tribunal Inland Revenue
Multan