2018 P T D 621

[Sindh High Court]

Before Muhammad Ali Mazhar, J

Messrs INBOX BUSINESS TECHNOLOGIES LTD. through Chief Investment Officer

Versus

PAKISTAN through Secretary Revenue Division and 2 others

Suit No. 2275 and C.M.A. No.14960 of 2017, decided on 9th March, 2018.

(a) Constitution of Pakistan ---

----Art. 10A---Right to fair trial---Scope---Right to a fair hearing and or trial necessitated that no one should be penalized by the decision upsetting and afflicting his right or legitimate expectations unless he was given prior notice of the case, a fair chance to answer it and a fair opportunity to explicate/present the case.

Warid Telecom (Pvt.) Ltd. v. Pakistan Telecommunication Authority 2015 SCMR 338 ref.

(b) Sales Tax Rules, 2006 ---

----R. 12(a)(i)---Allegation of evasion of tax and tax fraud---Power of Commissioner to suspend registration 'without prior notice' after satisfaction that person had issued fake invoices, evaded tax or committed tax fraud [Rule 12(a)(i) of Sales Tax Rules, 2006]---Scope---Word 'without prior notice' had much significance that necessitated and commanded onerous responsibility on the Commissioner to accomplish his satisfaction prior to passing suspension order which could be issued without prior notice---Commissioner was obligated to make sure and double check that the registered person had committed tax fraud and the case was vivid, obvious and fit for issuing suspension order---Commissioner was also required to discuss the tangible evidence in the suspension order which he was issuing without any notice or providing any opportunity of hearing to the registered person---Such drastic action without prior notice could only be issued where the Commissioner had solid and tangible evidence and not on basis of mere sweeping allegations---Satisfaction of Commissioner required a strong mind for action than mere suspicion and the discretion conferred upon Commissioner to pass suspension order without prior notice ought to be exercised with rationality and due diligence which meant the existence of mental persuasion much higher than mere opinion; a mind not troubled by doubt; a mind having reached a clear conclusion---Suspension order could not be passed in a slip shod manner but it should reflect the independent application of mind with cogent and plausible reasons which one may consider to be fair and in accordance with law.

Dr. Farogh Naseem and Munawar Hussain for Plaintiff.

Muhammad Aqeel Qureshi for Defendants Nos. 2 and 3.

Abdul Qadir Leghari, Assistant Attorney General.

Rabnawaz Ahmad Matiana, Deputy Commissioner, Inland Revenue.

Dates of hearing: 6th December, 2017 and 19th January, 2018.

ORDER

MUHAMMAD ALI MAZHAR, J.---This suit for declaration and permanent injunction has been brought to challenge the show-cause notice and suspension order dated 17.10.2017. The transient facts of the case are as follows:--

> The Government of Punjab took steps to import Laptops and in order to facilitate the import, they entered into a contract on 17.12.2011 with the plaintiff. The salient features of contract were that the Punjab HED shall obtain exemption from FBR with regard to GST and advance tax at import stage for laptops with a further condition that in case such exemption is not obtained, the tax shall be borne by the purchaser i.e. the Punjab HED. The goods on imports were to be received by Punjab HED and then handed over to the successful bidder i.e. the plaintiff, which was to take possession of the said goods only for the purpose of delivering them to the respective institutions. The Contract was for 100,000 laptops, subsequently through an Addendum dated 26.01.2012, 10,000 more laptops were imported by the Punjab HED and facilitated by the plaintiff. Even in terms of addendum, the Punjab Higher Education Department had to obtain exemption from the FBR and in case such exemption was not obtained, the Punjab Higher Education Department was liable to pay the amount of GST and advance tax pertaining to imports. As per contract and its Addendum, the Punjab Higher Education Department approached the FBR and vide letter dated 30.11.2011 FBR intimated to the Punjab Higher Education Department that the laptops in question imported by the Punjab Higher Education Department for public sector educational institutions are exempt from the payment of sales tax under Item 52 of Table 1 of the Sixth Schedule of the Sales Tax Act, 1990 and the said Punjab Higher Education Department was also exempt from the payment of advance income tax at import stage as per S.R.O. 947(I)/2008 dated 5.11.2008. The plaintiff was not importer which fact can be established by the letter of the Punjab Higher Education Department to the FBR dated 28.12.2011, letter by the Punjab Higher Education Department to the FBR dated 21.12.2011, letter by the FBR to the Punjab Higher Education Department dated 27.12.2011, letter by FBR to the Punjab Higher Education Department dated 29.12.2011, letter by Punjab Higher Education Department dated 9.2.2012 to the Deputy Collector of Customs, Allama Iqbal International Airport, wherein the last para of the said letter it has been requested that the Customs Department may facilitate the Punjab Higher Education Department in customs clearance and warehousing of the laptops. The defendant No.3

earlier issued a show-cause notice for the purposes of carrying out assessment, which was followed by another show-cause notice. These notices were challenged in constitution petition in which the plaintiff was directed to join the adjudication proceedings and the department should act strictly according to the law. The defendant No.2 without any show-cause notice or opportunity of hearing issued a suspension order under Section 21(1) of the 1990 Act read with Rule 21(a)(i) of the Sales Tax Rules, 2006. The effect of this suspension order is that the Sales Tax Registration of the plaintiff has been suspended w.e.f. 17.10.2017 and the plaintiff is being treated as non-active taxpayer. Simultaneously the defendant No.2 has also issued a show-cause notice under Section 21(2) of the 1990 Act read with Rule 12(a)(i) and Rule 12-A of the 2006 Rules as to why they should not be blacklisted.

2. The learned counsel for the plaintiff argued that the entire case of the department hinges upon that the plaintiff is the actual importer of the laptops but the tax department failed to consider that the actual implementation of the contract, the conduct of parties and the provisions and subsequent correspondences can only determine the exact covenant. In order to resolve any ambiguity in the contract and to ascertain the real intention of the parties, the court should have resort to the correspondences, the indenture of contract and the conduct of the parties including all attending circumstances. According to Section 79(1) of the Customs Act, 1969, it is the owner of the imported goods which has to file the goods declaration. The Airway bills and goods declarations categorically point out that it is the Punjab HED which is the actual owner, buyer and importer of the laptops.

3. He further contended that due to some misunderstanding in the original tax return, the plaintiff declared itself to be the importer, however vide letter dated 14.07.2017, the plaintiff moved for seeking permission to revise its tax returns. Though Section 114(6) of the 2001 Ordinance permits the revision of tax return, but unfortunately no order was passed by the learned Commissioner within 60 days of the application to file revise return dated 14.07.2017, therefore, the department cannot now rely upon the original return submitted under some misunderstanding.

4. The learned counsel further argued that the assumption of jurisdiction by the defendants in relation to the suspension of sales tax registration and blacklisting is mala fide. When FBR confirmed the tax exemption, the question of treating the plaintiff in default and lodging tax fraud proceedings including the extreme steps of suspension of sales tax registration is unwarranted. The statutory provision meant for ordering suspension under Section 21 of the Sales Tax Act does not exclude the principles of natural justice. If the statute itself does not exclude the principles of natural justice, the same cannot be excluded by delegated legislation.

5. It was further asserted that though Section 21(2) permits the Commissioner to blacklist or suspend the registration of a taxpayer if the said Commissioner is "satisfied" that the taxpayer/registered person has "issued fake invoice" or "has otherwise committed tax fraud". Admittedly, no fake invoice of sales tax has been issued by the plaintiff. The term "tax fraud" has been defined in Section 2(37) of the 1990 Act. In fact there is no determination by the department to the effect that the

plaintiff had intended to commit tax fraud. The term "satisfied" employed in Section 21(2) means an application of mind requiring determination with reasons. The term "satisfaction? means satisfaction upon reasonable grounds and existence of a state of mental persuasion much higher than opinion and when used in the context of judicial proceedings the mental state has to be arrived at within the prescribed statutory provisions. The reasons given by the defendant No.2 in the impugned suspension order are vague and arbitrary. It was further contended that under Rule 12(a)(i) of the 2006 Rules, the criteria for suspension are provided but the case of plaintiff does not fall under the incidents pointed out in sub-rule (A) to (F). With regard to the residuary category i.e. sub-rule (G), the same does not give an open-ended discretion to the learned Commissioner. The tax fraud can only be established once adjudication proceedings are finalized and the taxpayer has exhausted all appeals. It was further averred that not only the plaintiff has a strong prima facie case but also irreparable loss is being caused and shall further be caused in case the injunction as prayed is not granted as the entire business of the plaintiff has been brought to a complete standstill. The impugned action is against Articles 18 and 23 of the Constitution, which deal with the fundamental rights to conduct business and hold property. The learned counsel for the plaintiff in support of his contention referred to the case of Malik Ghulam Jilani v. Government of West Pakistan, reported in PLD 1967 SC 373. The court while dilating the provisions of Defence of Pakistan Ordinance 1965, held that the word "satisfied" requires stronger ground for action than mere suspicion. In the case of Muhammad Hayat v. The Crown, reported in PLD 1951 FC 15, Per Abdul Rashid-J, while expounding the provisions of Punjab Public Safety' Act, held that words "if satisfied " are not preceded by any qualifying adverb, such as, "reasonably". In the case of Director Food, NWFP v. Messrs Madina Flour and General Mills (Pvt.) Ltd., reported in PLD 2001 SC 1. The court held that discretionary decision is to be made according to rational reasons. Actions which do not meet these threshold requirements are arbitrary and might be considered as a misuse of powers. Whereas in the case of Warid Telecom (Pvt.) Limited v. Pakistan Telecommunication Authority reported in 2015 SCMR 338. The court expounded and explicated the principle and concept of natural justice. In the last case referred to by the learned counsel for the plaintiff i.e. Sohail Butt v. Deputy Inspector General of Police (North) National Highway and Motorway Police, reported in 2011 SCMR 698, the court held that the word "satisfied" means existence of mental persuasion much higher than mere opinion; a mind not troubled by doubt; a mind which has reached on clear conclusion.

6. The learned counsel for the Tax Department argued that the contract in question clearly stipulates that duties and taxes as applicable at the time of supply will be paid by the bidder. The exemption was only for import of laptops and backpacks were not included. The FBR did not provide any exemption to the plaintiff for import of laptops, however the exemption for import of laptops was available to HED but the said import was not made by HED itself, and hence it is not applicable in the present case. He admitted that Import by Provincial Government is exempt from GST and Advance Income Tax but this exemption was not available to the plaintiff. The invoices were issued by Dell in the name of the plaintiff. Similarly the plaintiff made the payment for such laptops through LCs opened by them. The present proceedings only intended to charge tax on the declaration made by the plaintiff itself in the sales tax returns. The Sales Tax Act, 1990 distinguishes between imports and supply. The issue of imports is

to be determined by the Customs authorities whereas the supply of the laptops is a transaction which the Inland Revenue has to tax, hence there is no bar on issuance of show-cause notice in respect of supply when proceedings are underway for its purchase/import as well. He further argued that the show-cause notices are well within the bounds of law as envisaged in the Sales Tax Act, 1990 and based on concrete evidence. As per subsection (2) of section 21 of the Sales Tax Act, when the Commissioner is satisfied that a registered person has 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. At the time of issuing order of suspension of registration of a person, the Commissioner institutes an inquiry and an opportunity of being heard is provided after suspension. The scheme of the Act does not envisage any opportunity of being heard before suspension of the person. If the plaintiff is cleared of the charge, the suspension order will be automatically withdrawn. The case of the plaintiff squarely falls under subsection (37) of Section 2 of the Sales Tax Act, 1990 which defines the Tax Fraud. The learned counsel in support of his contention referred to the case of Sh.Diwan Mohammad Mushtaq Ahmed v. Central Board of Revenue, reported in [1969] Vol.XIX Taxation 198 in which the court held that the rules of natural justice are to be read as part and parcel of every statute unless and until there is a specific provision in a particular statute to the contrary. In the case of Messrs Volkart Pakistan (Private) Limited v. Federation of Pakistan, reported in 2006 PTD 236, the court held that while examining a fiscal statute court should not be carried away with the fact that the same may be disadvantageous to some of the tax payers. If such a fiscal statute is beneficial to the country on the whole, the individual's interest should yield to the national' interest. Whereas the court in the case of Messrs Bilz (Pvt.) Ltd. v. Deputy Commissioner of Income-Tax, Multan, reported in 2002 PTD 1, held that fiscal statute has to be construed in its true perspective and in respect of payment of tax, if it is found due against a party, then such statute cannot be interpreted liberally in order to make out a case in favour of an assessee. In the case of Lucky Cement Ltd. v. Commissioner Income Tax, Zone Companies, Circle-5, Peshawar, reported in 2015 PTD 2210, it was held that a prohibitory clause, couched in the negative language should be construed and applied strictly. Court should assess and ascertain as to what was the real intent and object behind such a clause. And finally in the last case cited by the learned counsel for the tax department Messrs Pakistan Paper Products Ltd. v. Commissioner of Income Tax, reported in 2006 PTD 1027, the court held that function of court is not to render operation of a statute redundant or interpret it in a manner which may lead to evasion of tax.

7. Heard the arguments. In fact by means of this lawsuit for declaration and permanent injunction, the plaintiff has questioned the suspension order dated 17.10.2017 passed under Section 21(2) of the Sales Tax Act, 1990 read with Rule 12(a)(i) of the Sales Tax Rules, 2006. The gist and essence of suspension order communicates that the Deputy Commissioner, Inland Revenue, Enforcement and Collection Unit, Zone-III, Large Taxpayer's Unit, Karachi reported that the plaintiff filed monthly Sales Tax Returns for the tax periods March 2012 on 13.3.2015 and of May 2012 on 15.6.2015. The plaintiff declared taxable supply as exempt in sales tax returns whereby evaded sales tax amount of Rs.663,520,000/-. In the suspension order it was further alleged in paragraph 5 that the registered person knowingly, dishonestly or fraudulently declared sales of notebook computers and back packs as exempt in the sale tax returns,

contravening the explicit duties/ obligation placed on them under Sales Tax Act, 1990. While referring to Section 21(2) of the Sales Tax Act, 1990 read with Rule 12(a)(i) of the Sales Tax Rules, 2006 it is avowed that where a Commissioner is satisfied that 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 and pending further inquiry. It is further made known in the suspension order that the taxpayer will be considered as "Non Active Taxpayers" as per provision of Rule 12A read with clause (1) of Section 2 of the Sales Tax Act, 1990.

8. On the same date a show-cause notice under Section 11(5) read with section 11(2), 33 and 34 of the Sales Tax Act, 1990 was also issued to the plaintiff. Whereas on 23.10.2017 one more show-cause notice was issued as to why action under Section 21(2) of the Sales Tax Act, 1990 read with Rule 12(a)(i) and Rule 12A of the Sales Tax Rules, 2006 should not be initiated to blacklist the plaintiff and exclude them from the list of "Active Taxpayer" on the ground of evasion of tax or committed tax fraud. When the matter was fixed for orders on 30.10.2017 on injunction application, the court ordered that the proceedings if any for deciding the issue of blacklisting may continue by the Department but no final order shall be passed till next date of hearing and so far as the suspension order is concerned, that has already been passed, therefore, the propriety and validity of suspension order shall be taken up after notice to the defendants.

9. One more facet is also reckonable that the plaintiff has filed another Suit No.2274/2017 in which they have impugned the show-cause notice dated 17.10.2017 whereby the plaintiff was called upon to show as to why the sales tax amount should not be recovered including the default surcharge and penalty. In this case also while issuing notice to the defendants as well as D.A.G. the court ordered that proceedings if any may continue but till next date of hearing no coercive action shall be taken against the plaintiff. During the course of arguments learned counsel for the plaintiff produced an Assessment Order No.03/2017-18, passed on 17.11.2017 which is almost after one month of suspension order dated 17.10.2017. A scant foretaste and preview of Assessment Order put on view that the matching invoices and figure of alleged evaded tax are mentioned as pointed out in the suspension order passed much earlier without notice and without subpoenaing any explanation.

10. Section 21 of the Sales Tax Act, 1990 accentuates and draw attention to the incidents when the extreme action of De-registration, blacklisting and suspension of registration can be taken. A mechanism has been set down by dint of which the Board or any officer, authorized in this behalf, may subject to the rules, de-register a registered person. However, subsection (2) expand on that in the 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. Contemporaneously Rule 12 of the Sales Tax Rules, 2006 is also germane to blacklisting and suspension of registration which propounds a modus operandi to be followed for suspension and blacklisting distinctly. However the precondition and qualification of Commissioner's satisfaction is communal in the rules as well. The foundation of structuring and reinforcing the case of suspension is

provided under the head of Suspension from Clauses (A) to (G). No right of appeal against the suspension is provided except that on receipt of the reply to the show-cause notice after giving an opportunity of hearing to the registered person, if the Commissioner is satisfied, he may order for revoking of suspension of the registered person. Nevertheless, in the aftermath of blacklisting, a self-speaking order is required to be passed with the reasons for blacklisting which is made appealable. For the ease of reference Section 21 of the Sales Tax Act, 1990 and Rule 12 of Sales Tax Rules, 2006 concerning to the procedure of suspension and blacklisting are reproduced as under:--

Section 21 of the Sales Tax Act, 1990.

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

(1) The Board or any officer, authorized in this behalf, may subject to the rules, de-register a registered person or such class of registered persons not required to be registered under this Act.

(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) During the period of suspension of registration, the invoices issued by such person shall not be entertained for the purposes of sales Tax refund or input tax credit, and once such person is black listed, the refund or input tax credit claimed against the invoices issued by him, whether prior or after such black listing shall [* * *] be rejected through a self-speaking appealable order and after affording an opportunity of being heard to such person.

(4) Notwithstanding anything contained in this Act, where the Board, the concerned Commissioner or any officer authorized by the Board in this behalf has reasons 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, the Board, concerned Commissioner or such Officer may after recording reasons in writing, block the refunds or input tax adjustments of such person and direct the concerned Commissioner having jurisdiction for further investigation and appropriate legal action.

Rule 12 of the Sales Tax Rules, 2006

12. 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:-

(A) non-availability of the registered person at the given address;

(B) refusal to allow access to business premises or refusal to furnish records to an authorized Inland Revenue Officer;

(C) abnormal tax profile, such as taking excessive input tax adjustments, continuous carry-forwards, or sudden increase in turnover;

(D) making substantial purchases from or making supplies to other blacklisted or suspended person;

(E) non-filing of sales tax returns;

(F) on recommendation of a commissioner of any other jurisdiction;

(G) any other reason to be specified by the Commissioner;

(ii) the suspension of registration shall take place through a written order of the Commissioner concerned, giving reasons for suspension. This order shall be endorsed to the registered person concerned, all other LTUs/RTOs, the FBR's computer system, the STARR computer system and the Customs Wing computer system for information and necessary action as per law;

(iii) a registered person who does not file sales tax return for six consecutive months shall be caused to be suspended through the system without any notice;

(iv) in cases, where the buyers and suppliers of any such person, whose registration is being suspended, belongs to another LTU/RTO, and these buyers/ suppliers are also required to be suspended, the Commissioner shall intimate the Chief Commissioner of the concerned LTU/RTO in whose jurisdiction such buyers/ suppliers fall, in writing explaining the complete facts of the case and the reasons on the basis of which these buyers/suppliers are to be suspended, to initiate proceedings for suspension/blacklisting of the buyers/suppliers;

(v) no input tax adjustment/refund shall be admissible to the registered person during the currency of suspension. Similarly, no input tax adjustment/refund shall be allowed to any other registered persons on the strength of invoices issued by such suspended person (whether issued prior to or after such suspension), during the currency of suspension;

(vi) the Commissioner shall, within seven days of issuance of order of suspension, issue a show-cause notice (through registered post or courier service) to the registered person to afford an opportunity of hearing with fifteen days of the issuance of such notice clearly indicating that he will be blacklisted, in case-

(A) there is no response to the notice;

(B) he has not provided the required record;

(C) he has not allowed access to his business record or premises; and

(D) any other reason specified by the Commissioner;

(vii) in case show-cause notice is not issued within seven days of the order of suspension, the order of suspension shall become void abinitio;

(viii) in case of non-availability of the suspended person at the given address, the notice may be affixed on the main notice Board of the LTU/ RTO;

(ix) on receipt of the reply to the notice and after giving an opportunity of hearing to the registered person, if the Commissioner is satisfied, he may order for revoking of suspension of the registered person.

11. At this point of time the definition of tax fraud provided under subsection (37) of Section 2 of the Sales Tax Act, 1990 is somewhat significant which is reproduced as under:--

"(37) 'tax fraud' means knowingly, dishonestly or fraudulently and without any lawful excuse (burden of proof of which excuse shall be upon the accused)-

(i) doing of any act or causing to do any act; or

(ii) omitting to take any action or causing the omission to take any action, [including the making of taxable supplies without getting registration under this Act [or];

(iii) falsifying [or causing falsification] the sales tax invoices]

in contravention of duties or obligations imposed under this Act or rules or instructions issued thereunder with the intention of understating the tax liability [or underpaying the tax liability for two consecutive tax periods] or overstating the entitlement to tax credit or tax refund to cause loss of tax."

12. The plaintiff in the same suit has also sought the declaration that the Sales Tax Rules, 2006 prescribed through S.R.O. 555(I)/2006 dated 5.6.2006, so also amendments made thereunder, in particular Rules 12 and 12-A including subsection (37) of Section 2 and Section 21 of the Sales Tax Act, 1990 are unconstitutional

especially the Rule permitting the suspension without prior notice and or without due process of law is violative of Article 10-A of the Constitution.

13. Due process is prerequisite that needs to be respected at all stratums. The conception and perception of due process was developed on or after Clause 39 of Magna Carta that "No free man is to be arrested, or imprisoned, or disseised, or outlawed, or exiled, or in any other way ruined, nor will we go against him or send against him, except by the lawful judgment of his peers or by the law of the land". In our Constitution, right to fair trial is a fundamental right. This constitutional reassurance envisaged and envisioned both procedural standards that courts must uphold in order to protect peoples" personal liberty and a range of liberty interests that statutes and regulations must not infringe. On insertion of this fundamental right in our Constitution, we ought to analyze and survey the laws and the rules/ regulations framed thereunder to comprehend whether this indispensable right is accessible or deprived of? In case of stringency and rigidity in affording this right, it is the function rather a responsibility of court to protect this right so that no injustice and unfairness should be done to anybody. The proactive role of the court must alone prove that this right is not confined only within the precincts of the Constitution but in actuality and for all practicality it exists to do good to the people. The right to a fair hearing and or trial necessitates that no one should be penalized by the decision upsetting and afflicting his right or legitimate expectations unless he is given prior notice of the case, a fair chance to answer it and a fair opportunity to explicate/present the case. The right to a fair trial means that general public and commonalities can be sure that process will be fair and certain which is the finest method of detaching and disengaging a guilty from an innocent thereby protecting against injustice. The right to fair trial is recognized worldwide as a fundamental human right by virtue of Article 10 of Universal Declaration of Human Rights which expounds that "Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him". The honourable Supreme Court in the case of Warid Telecom (Pvt.) Limited v. Pakistan Telecommunication Authority, reported in 2015 SCMR 338 held as under:--

> "Constitution of Pakistan, Article 10A. Fundamental Rights. Whenever adverse action was being contemplated against a person a notice and/or opportunity of hearing was to be given to such person. Said principle was a fundamental right under Article 10A in the Constitution. However, both the requirements of a notice and providing an opportunity of a hearing may also be dispensed with in certain type of cases e.g. where such requirement would cause "more injustice than justice" or it was not in the "public interest". The Indian Supreme Court in the case of Karnataka Public Service Commission v. B. M. Vijaya Shankar (AIR 1992 Supreme Court 952) stated that, when meeting the requirement of notice and providing an opportunity of hearing will cause "more injustice than justice" or it is not in the "public interest" the same may be withheld. It will be useful to reproduce the following portion from the said judgment:--
>
> "(4) Was natural justice violated? Natural justice is a concept which has succeeded in keeping the arbitrary action within limits and preserving the rule of law. But with all the religious rigidity with which it should be observed;

since it is ultimately weighed in balance of fairness, the courts have been circumspect in extending it to situations where it would cause more injustice than justice. Even though the procedure of affording hearing is as important as decision on merits yet urgency of the matter, or public interest at times require, flexibility in application of the rule as the circumstances of the case and the nature of the matter required to be dealt may serve interest of justice better by denying opportunity of hearing and permitting the person concerned to challenge the order itself on merits not for lack of hearing to establish bona fide or innocence but for being otherwise arbitrary or against rules. Present is a case which, in our opinion, can safely be placed in a category where natural justice before taking any action stood excluded as it did not involve any misconduct or punishment."

Another case from the India in a similar vein is the case of Union of India v. J. N. Sinha (AIR 1971 Supreme Court 40) where it was held, that:--

"As observed by this Court in Kraipak v. Union of India AIR 1970 SC 150, "the aim of rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice. These rules can operate only in areas not covered by any law validly made. In other words they do not supplant the law but supplement it." It is true that if a statutory provision can be read consistently with the principles of natural justice, the Courts should do so because it must be presumed that the legislatures and the statutory authorities intend to act in accordance with the principles of natural justice. But, if on the other hand, a statutory provision either specifically or by necessary implication excludes the application of any or all the rules of principles of natural justice then the Court cannot ignore the mandate of the legislature or the statutory authority and read into the concerned provision the principles of natural justice. Whether the exercise of a power conferred should be made in accordance with any of the principles of natural justice or not depends upon the express words of the provision conferring the power, the nature of the power conferred, the purpose for which it is conferred and the effect of the exercise of that power."

14. The connotation and import forming the constituents of the word "satisfied" has been used in various laws and interpreted and deciphered in a number of judgments of our own as well as foreign jurisdiction. On close appraisal and scrutiny of numerous judgments, the true meaning and import of this expression is deducible as under:--

1. Word "satisfied" in R. 32, requires "stronger" ground for action than mere suspicion. Existence of reasonable grounds essential under S. 3(2)(x)-Mere declaration of "satisfaction" not sufficient (Defence of Pakistan Ordinance, 1965).

2. The words "if satisfied " are not preceded by any qualifying adverb, such as, "reasonably". It is the satisfaction of the arresting officer that forms the basis of the arrest of the detenu. The legislature has omitted the word "reasonably" which would have enabled Courts of law to examine the sufficiency of the

reasons for the satisfaction of the arresting authority. (Punjab Public Safety Act.)

3. Discretionary decision is to be made according to rational reasons which means that there be findings of primary facts based on good evidence and decisions. Actions which do not meet these threshold requirements are arbitrary and might be considered as a misuse of powers.

4. The word "satisfied" means existence of mental persuasion much higher than mere opinion; a mind not troubled by doubt; 'a mind which has reached on clear conclusion.

5. The word 'satisfied' is a term of considerable expansiveness.

6. The term 'satisfied' has been understood to mean, free from anxiety, doubt, perplexity, suspense or uncertainty.

7. In the context, it is synonymous with 'convince the understanding or convince beyond a reasonable doubt.'

8. The word 'satisfied' in section 23 of the Hindu Marriage Act 1955, must mean satisfied on preponderance of probabilities and not satisfaction beyond reasonable doubt.

9. The word 'satisfied' has been defined in Shorter Oxford English Dictionary, 3rd edn, p. 1792, as to furnish with sufficient proof of information, to set free from doubt or uncertainty, to convince

10. to answer sufficiently (an objection, question), to fulfill or comply with (a request), to solve (a doubt, difficulty):

11. to answer the requirements of (a statement of things, hypothesis, etc); to accord with (condition).

12. The word "satisfied" does not mean "satisfied beyond reasonable doubt".

13. The nature and gravity of an issue necessarily determines the manner of attaining reasonable satisfaction of the truth of the issue and because the presumption of innocence is to be taken into account.

14. The phrase "is satisfied" means, in my view, simply "makes up its mind"; the court on the evidence comes to a conclusion which, in conjunction with other conclusions, will lead to the judicial decision.

Ref: PLD 1967 SC 373 (Malik Ghulam Jilani v. Government of West Pakistan) PLD 1951 FC 15 (Muhammad Hayat v. Crown) PLD 2001 SC 1 (Director Food, N.W.F.P. v. Messrs Madina Flour and General Mills (Pvt.) Ltd.) 2011 SCMR 698 (Sohail Butt v. Deputy Inspector General of Police (North) National Highway and Motorway Police) AIR 1957 Punj 303 (Faquir Chand v. Bhana

Ram) (1989) 1 Civ LJ 104, p 106 (Ker) (DB) (Somasekharan Nair v Thenkamma) (S R Bommai v. Union of India) AIR 1994 SC 1918, pp 1969-1970, AIR 1994 SCW 2946, (1994) 3 SCC 1, (1994) 2 JT (SC) 215]. [1966] 1 All E.R. 524 (Blyth v. Blyth). Judicial Dictionary by K J Aiyar, 15th Edition, Volume 2, 2011,]

15. Whether the plaintiff has committed the tax fraud and or evaded the tax liability and whether on establishing these charges the plaintiff is liable to be blacklisted or not? All these questions are to be decided by the hierarchy or chain of command provided under the Sales Tax Act, 1990. The point at issue for which the plaintiff has in essence approached this court is with regard to the suspension order. Under Section 21 of the Sales Tax Act, 1990 for the purpose of suspending the registration, the satisfaction of the Commissioner is de rigueur as an indispensable condition. If I look into Rule 12 of the Sales Tax Rules, 2006, the suspension and blacklisting both have been treated separately. In this rule too it is clearly provided that where the Commissioner is satisfied that the registered person has issued fake invoices, evaded tax or committed tax fraud, the registration may be suspended by the Commissioner without prior notice pending further inquiry. The definition of tax fraud is separately provided under subsection (37) of Section 2 of the Sales Tax Act, 1990. Though under Section 21 it is nothing provided that the suspension can be done without prior notice but the elementary component for exercising the right of suspension hang on the satisfaction of the Commissioner.

16. The word without prior notice has much significance that necessitates and commands onerous responsibility on the learned Commissioner to accomplish his satisfaction prior passing suspension order which under the rules can be issued without prior notice. In this explicit context the learned Commissioner is obligated under the letters of the law to make sure and double check that the registered person has committed tax fraud and the case is so vivid, obvious and fit for issuing suspension order. If so, he is also required to discuss the tangible evidence in the suspension order which he is issuing without any notice or providing any opportunity of hearing to the registered person. In my view, such type of drastic action without prior notice can be issued only where the Commissioner has the solid and tangible evidence and not on mere sweeping allegations. The assessment order No.3/2017-2018 was passed in the case of plaintiff on 17.11.2017 under Section 11(2) r/w Section 34 of the Sales Tax Act, 1990 for the period of March, 2012 and May, 2012. This is the same matter and period for which the suspension order has been issued at least one month's before the date of assessment order. The learned counsel for the tax department himself confessed that the exemption was only for import of laptops and backpacks were not included. He further admitted that Import by Provincial Government is exempt from GST and Advance Income Tax. He also made much emphasis that at the time of issuing order of suspension of registration of a person, the Commissioner institutes an inquiry. Despite numerous triable issues, no concrete evidence or material has been discussed which may reasonably demonstrate at this stage that the plaintiff has committed the tax fraud nor anything is discernible from the suspension order that any discrete inquiry was conducted.

17. The word satisfied requires stronger mind for action than mere suspicion and the discretion conferred upon Commissioner to pass suspension order even without prior notice ought to have been exercised with rationality and due diligence which means the existence of mental persuasion much higher than mere opinion; a mind not troubled by doubt; a mind must have reached on clear conclusion. Up till now the guilt of the plaintiff has not been proved through the findings of any independent forum even the assessment order passed has been assailed by the plaintiff in appeal. The basis for satisfaction are envisioning in Clauses A to G of Rule 12 of 2006 Rules but a simple glimpse and preview of the suspension order do not reflect any particular condition or basis relied on. The suspension order cannot pass in a slip shod manner but it should reflect the independent application of mind with cogent and plausible reasons to which one may consider it to be fair and in accordance with law. It is indeed specie and rudimentary trait of celebrated principle of due process of law and in case of its violation, the registered person can approach to the court for redress as admittedly, no right of appeal is provided against the suspension under the Sales Tax hierarchy.

18. The learned counsel for the defendants referred to the case of Sh. Diwan Mohammad Mushtaq Ahmed (supra). The principle of natural justice has already been discussed in detail while referring to the case of Warid Telecom. The case of Volkart Pakistan and Messrs Bilz (Pvt.) Ltd. (supra) are distinguishable in the present situation where only limited issue of suspension is involved. In the case of Lucky Cement Ltd (supra), the court held that prohibitory clause, couched in the negative language should be construed and applied strictly. This dictum is also distinguishable in the present circumstances. In the next case of Pakistan Paper Products Ltd (supra) it was held that function of court is not to render operation of a statute redundant or interpret it in a manner which may lead to evasion of tax. No interpretation is being made here for rendering operation of any statue redundant but the threshold of examining the attribute is whether the authority while issuing suspension order exactly proceeded within the tenor of law or overstepped and surpassed.

19. In the wake of above discussion, the suspension order dated 17.10.2017 passed by Commissioner Inland Revenue is set-aside. However, the proceedings if any commenced with regard to blacklisting may continue and after providing ample opportunity of hearing, the order may be passed by the competent authority. In case of any adverse order, the plaintiff may seek appropriate remedy provided under the provisions of Sales Tax Act, 1990. The application is disposed of accordingly.

MWA/I-16/Sindh Order accordingly.

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