

**OUT TODAY IMMEDIATE
IN THE LAHORE HIGH COURT, LAHORE**

*WP 26109/12
17-11-12*

From
20 NOV 2012
M(L)

The Addl. Registrar,
Lahore High Court, Lahore.

To

- (1) The Federal Board of Revenue through its Chairman Constituent Avenue, Islamabad.
- (2) The Commissioner Inland Revenue Regional Tax Office-II Zone-XII Billaur Palace, Lahore.
- (3) The General Manager PRAL 14-Hill Road F-6/3 Constitutional Avenue, Islamabad.

49532



*Ordering to
stand rejected*

Subject: - WRIT PETITION NO. 26109/2012

M/S Magna Dil Company Versus The Federal Board of Revenue etc

Sir,

In continuation of this Court letter No 25295(G)

dated 20.10.12

I am directed to forward for information and immediate compliance

a copy of this Court's Order/Judgment dated 1.11.2012 passed in the

above noted case.

*V.O note to Chief (Fate) for
please ording on FBR web.
Your's Faithfully
16-11-12*

ASSISTANT REGISTRAR (WRIT)

149532
M(L) Office on *21-11-12*

49532
24/11/12

Stereo. H C J D A 38.

Judgment Sheet
IN THE LAHORE HIGH Court AT LAHORE
JUDICIAL DEPARTMENT

W. P.No.26109 of 2012

M/s Magna Oil Company Vs F.B.R etc

J U D G M E N T

Date of Hearing	01.11.2012.
Petitioner By:	Mr. Hashim Aslam Butt, Advocate.
Respondents By:	Mr. Afzal Hussain, Advocate.

Ayesha A. Malik.J: The Petitioner impugns the suspension of his Sales Tax Registration Number vide order dated 20.09.2012 issued by Respondent No.2.

2. Brief facts are that the Petitioner is engaged in the business of trading of oil and oil products. The Petitioner's business is duly registered with Revenue Department as a wholesaler and has been allotted NTN 2590744-1 & STRN 03.00.2710.003.82. The Petitioner has been filing its sales tax return regularly in accordance with the provisions of Sales Tax Act, 1990. Respondent No.3 on the basis of illegal and unlawful order passed by Respondent No.2 suspended the Sales Tax status with effect from 20.09.2012 without any show cause notice.

3. The grievance of the Petitioner is that his Sales Tax Registration Number was suspended without notice, without any show cause and without passing a speaking order under Section 21(2) of the Sales Tax Act, 1990 (ST Act). The case of the Petitioner is that the Respondents should have issued a notice to the Petitioner providing reasons for suspension. The

submitted by the learned counsel fore the Petitioner that the entire action of Respondents No.2 & 3 is contrary to Section 21 of the ST Act read with the Sales Tax Rules 2006 (Rules) and the Sales Tax General Order No.3 of 2004 (STGO) dated 13.06.2004.

4. On behalf of the Respondents, learned counsel submits that information was received regarding the issuance of fake invoices by one Rehman Enterprises. The Petitioner was investigated against in connection with the fake invoices. Notice was issued to the Petitioner for production of record to investigate the issue of fake invoices. First notice was issued on 22.02.2012, then again on 03.04.2012 which notice warned of initiating proceedings for blacklisting. The notice was received by the Petitioner on 09.04.2012 when he appeared before Respondent No.3 and informed him that he was being investigated by the Directorate of Intelligence, hence the audit proceedings under Section 38 should be postponed. Thereafter, on 04.06.2012, intimation of audit observations were issued to the Petitioner. Since the Petitioner did not respond or appear before the Assistant Commissioner, the order in original was passed on 17.08.2012. Thereafter, on 20.09.2012 sales tax registration was suspended under Section 21 (2) of the ST Act read with Rule 12 of the Rules and clause N of the STGO 03/2004 dated 12.06.2004.


5. I have heard learned counsel for the parties and reviewed the record available on the file.

6. The controversy at hand pertains to whether notice was issued to the Petitioner prior to the suspension of the sales tax registration on 20.09.2012. The record reveals that two notices

a reply was filed to the said notice on 09.04.2012. The reply of the Petitioner required that the Respondents postponed the audit proceedings as the Directorate of Intelligence was also conducting audit proceedings against the Petitioner. Having received the notice of 22.02.2012 to my mind the Petitioner cannot argue that he had no notice of the suspension order of 20.09.2012. The Petitioner on 09.04.2012 merely placed a request for postponement before the Respondents. It stands to reason that after placing such a request the Petitioner was required to maintain contact with the Assistant Commissioner to inquire as to the fate of its request for postponement. Under the circumstances, the Petitioner cannot deny having received notice of the audit proceedings under Sections 25 and 38 of the ST Act. The notice of 20.02.2012 clearly provides that the Petitioner is being investigated in the involvement of fake invoices and that the record is being audited in terms thereof. Since the Petitioner did not bother to respond to notice dated 03.04.2012 or provide the required information/documents, the order of 17.08.2012 was issued. Upon being satisfied that the Petitioner had issued fake invoices the Commissioner suspended the Petitioner's sales tax registration on 20.09.2012. As such there was no violation of Section 21 (2) of the ST Act. Furthermore, the Petitioner was given sufficient notice and time to participate in the audit/investigation. If they choose to stay away from the proceedings they cannot claim that the suspension was ordered without notice to them. In this regard, the Respondents have also pointed out that the Petitioner promptly appeared against the order of 17.04.2012, meaning that they were fully aware of the order and the risk of a suspension order. The finding regarding fake invoices

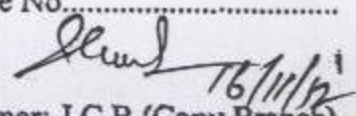
were put to notice again of a possible suspension order under Section 21 (2) of the ST Act.

7. Therefore, in view of the above, there is no illegality with the order of 20.04.2012. Suspension has been ordered in accordance with the law. Petition is dismissed.


(AYESHA A. MALIK)
JJUDGE

TRUE COPY

In Case No.....


Examiner: J.C.B (Copy Branch)
Lahore High Court, Lahore.

Anwar

14/5/2012

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IN THE LAHORE HIGH COURT, LAHORE

26109
W.P NO. _____ / 2012

M/S MAGNA OIL COMPANY, Room No.8, 3rd Floor, 14 Civic Centre,
Barkat Market, New Garden Town, Lahore.
Through its Proprietor Mr. Danish Nasir.(CNIC#35202-1703421-9)

PETITIONER

VERSUS

1. The Federal Board of Revenue thought its Chairman, Constitutional Avenue, Islamabad.
2. The Commissioner, Inland Revenue, Regional Tax Office-II, Zone-XII, Billaur Palace, Lahore.
3. The General Manager, PRAL, 14-Hill Road, F-6 / 3, Constitutional Avenue, Islamabad.

RESPONDENTS

WRIT PETITION UNDER ARTICAL 199 OF THE CONSTITUTION OF
ISLAMIC REPUBLIC OF PAKISTAN, 1973.

Respectfully Sheweth,

1. That, the Petitioner is a sole individual, engaged in the business of trading of oil and oil products. The petitioner's business firm is duly registered with revenue department as a wholesaler and has been allotted NTN 2590744-1 & STRN 03.00.2710.003.82. The petitioner falls within the jurisdiction of Regional Tax Office-II, Lahore. Mr. Danish Nasir is sole proprietor of the firm and is fully conversant with the facts of the case and is competent to file the present petition.

(Copies NTN & STRN dated 25.09.2006 are Annexure A & B)

2. That the petitioner has been filing its sales tax return regularly in accordance with the provisions of sales tax Act, 1990 and nothing is outstanding against him. The respondent no.3 on the basis of illegal and unlawful "order" passed by respondent no.2 "suspended" the sales tax status with effect from 20.09.2012, without any show cause notice or