

IN THE HIGH COURT OF SINDH AT KARACHI

Present:
Muhammad Junaid Ghaffar, J.
Agha Faisal, J.

CP D 6920 of 2019 : Aachee Garments (Pvt.) Ltd. & Another
vs. Federation of Pakistan & Others

For the Petitioners : Barrister Ovais Ali Shah

For the Respondents : Mr. Ameer Bukhsh Metlo, Advocate

Mr. Kafeel Ahmed Abbasi
Deputy Attorney General

Date of hearing : 25.03.2021

Date of announcement : 25.03.2021

JUDGMENT

Agha Faisal, J. The petitioner has assailed a summons / notice dated 22.10.2019 ("Impugned Notice") issued thereto under section 37 of the Sales Tax Act 1990 ("Act") predicated *inter alia* on the grounds that the same was patently an abuse of process and manifestly unjust / prejudicial towards the petitioner.

2. Briefly stated, the Impugned Notice was served upon the petitioner requiring personal appearance and submission of its comprehensive record¹ for the preceding five years, within seven days; failing which it would be deemed that the petitioner was involved in tax fraud. It is manifest from the Impugned Notice that no reference was made to any identified inquiry being conducted by the officer issuing the same.

3. Per petitioner's learned counsel, the Impugned Notice was untenable in law, *inter alia*, having been issued other than in conformity with the provision where under it was issued; amounted to a fishing / roving exercise couched to conduct an unmerited audit² of the petitioner; and alleged presumed / insinuated tax fraud, yet without recourse to the relevant provision of the Act³.

¹ Comprising of commercial invoices, bank debit advice, details of bank accounts, bank statements, inventory record, sales tax returns, utility bills, receipts of fuel charges and sources of funds / investments.

²² Permissible through recourse to section 25 of the Act.

³ Section 38A of the Act.

It was concluded that the Impugned Notice be set aside; while placing reliance on *Taj International*⁴ and *Iqbal & Sons*⁵.

4. The department's counsel supported the Impugned Notice; bulwarked upon his contention that the same was predicated upon an alleged misuse of an SRO. Learned counsel admitted that while there was no specific inquiry mentioned in the Impugned Notice, and / or in the comments filed on behalf of the department, however, mere provision of the requisite documentation / information would take the matter to its logical conclusion; hence, there was no occasion for the Impugned Notice to merit interference herein⁶.

The learned Deputy Attorney General submitted that section 37 of the Act empowered an officer of Inland Revenue and that no cavil could be articulated to the Impugned Notice having been issued by such an officer. It was argued that while there was no specified inquiry / case pending before the relevant officer as of date, however, such proceedings could materialize post compliance of the Impugned Notice by the petitioner. Per learned DAG, the notice impugned merely sought information, however, the threat of penal consequence, cited therein, was unwarranted.

It is considered imperative to emphasize that both the respondents' counsel graciously submitted that there was no reference to any identified inquiry, pending before the officer issuing the Impugned Notice or otherwise, contained in the Impugned Notice.

5. We have appreciated the arguments of the respective learned counsel and have also considered the record / law to which our attention was solicited. It is settled law⁷ that a departmental notice may not ordinarily merit interference unless it is manifest that it suffers from want of jurisdiction; amounts to an abuse of process; and / or is *mala fide*, unjust and / or prejudicial towards the recipient. Therefore, the only question for determination before us is whether the Impugned Notice suffers from any infirmity; meriting interference by this Court.

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⁴ Per Syed Mansoor Ali Shah J. in *Taj International (Private) Limited & Others vs. Federal Board of Revenue & Others* reported as 2014 PTD 1807 ("*Taj International*").

⁵ Per Shahid Karim J. in *Iqbal & Sons vs. Federation of Pakistan & Others* reported as 2017 PTD 590 ("*Iqbal & Sons*").

⁶ Reliance was placed upon *Rafiq ur Rehman vs. Federation of Pakistan & Others* reported as 2017 PTD 1178 ("*Rafiq ur Rehman*").

⁷ Per Muhammad Ali Mazhar J. in *Dr. Seema Irfan & Others vs. Federation of Pakistan & Others* reported as PLD 2019 Sindh 516.

6. It is considered illustrative to initiate this deliberation by advertng to section 37 of the Act, which states as follows:

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"37. Power to summon persons to give evidence and produce documents in inquiries under the Act.

(1) Any officer of Inland Revenue shall have powers to summon any person whose attendance he considers necessary either to tender evidence or to produce documents or any other thing in any inquiry which such officer is making for any of the purposes of this Act.

(2) Any person summoned under sub-section (1) shall be bound to attend either in person or by an authorised agent, as the officer of Inland Revenue may direct;

Provided that a person who is exempted from personal appearance in a court under section 132 and 133 of the Code of Civil Procedure (Act V of 1908), shall not be required to appear in person.

(3) Any inquiry before an officer of Inland Revenue shall be deemed to be a judicial proceeding within the meaning of section 193 and 228 of the Pakistan Penal Code (Act XLV of 1860)."

(Underline added for emphasis).

7. It is manifest that section 37 empowers a designated officer to summon persons to give evidence and produce documents in any inquiry, pending before the said officer in pursuance of the Act. The inquiry itself is considered to be judicial proceedings within meaning of the relevant provisions of the Pakistan Penal Code 1860. The Impugned Notice, and / or the comments filed on behalf of the department, makemakes no reference to any requisite specified inquiry and the respondents' counsel have unequivocally admitted to the absence thereof.

8. *Verba cum effectu accipienda sunt* is a judicial maxim that means that words must be interpreted so as to have effect⁸. Every word and every provision is to be given effect and none should be ignored so as to needlessly be given another interpretation that causes it to duplicate another provision or to have no consequence⁹. Redundancy could not be attributed to legislation¹⁰ and words cannot be considered meaningless, else they would not have been used¹¹.

9. A plain reading of section 37 of the Act demonstrates that it predicates the exercise of the authority so conferred in respect of an inquiry; however, in the present facts the absence of an inquiry, underlying the Impugned Notice, is prima facie discernible. Even in comments no reference has been made to any inquiry, in respect of which the impugned notice had been issued; nor it has been disclosed as to against whom the purported proceedings of tax fraud as mentioned in the impugned notice were being carried on.

⁸ Black's Law Dictionary; Seventh Edition.

⁹ Reading Law: The Interpretation of Legal Texts; Antonin Scalia and Bryan A Garner.

¹⁰ *Collector of Sales Tax vs. Messrs Mega Tech Pvt Ltd* reported as 2005 SCMR 1166; *Iqbal Hussain vs. Pakistan* reported as 2010 PTD 2338.

¹¹ Per *Roberts J. in United States vs. Butler* reported as 297 US 1 65.

10. *Rafiq ur Rehman* ostensibly pivoted on the presence of allegations, considered vague and ambiguous by the petitioner; however, the said stance was not sustained by the Court. In the *lis* before us there is no question of allegations, vague or otherwise, and it is the very underlying inquiry that appears to be absent. *Rafiq ur Rehman* also does not dwell upon the controversy before us, i.e. whether recourse to section 37 of the Act is merited without compliance of the very requirements enunciated in the verbiage thereof. Therefore, reliance thereupon by the respondents does not augment their position as the said authority appears to be distinguishable upon the pertinent facts and circumstances.

11. It remains an admitted position that statutory requirement/s in respect of the Impugned Notice are unfulfilled as no inquiry, pending before the relevant officer or even otherwise, has been particularized therein and / or in the comments filed herein. Therefore, the Impugned Notice, in the present facts and circumstances, is found to be dissonant with the very provision of law¹² where under it has been issued; hence, could not be justified before us.

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12. In view of the reasoning and rationale herein contained, it is our considered view that the Impugned Notice appears to be an abuse of process and manifestly unjust / prejudicial towards the petitioner, hence, cannot be sustained¹³. Therefore, this petition is allowed and the Impugned Notice is set aside. However, the respondents shall remain at liberty to seek mitigation of any subsisting grievance in accordance with the law.

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¹² Section 37 of the Sales Tax Act 1990.

¹³ Per *Saeeduzzaman Siddiqui J.* in *PIA vs. CBR & Others* reported as 1990 CLC 868; *Assistant Collector Customs & Others vs. Khyber Electric Lamps & Others* reported as 2001 SCMR 838.