

**IN THE HIGH COURT OF SINDH AT KARACHI**

**SPL. CR. BAIL APPLICATION NO.5/2016**

**PRESENT: MR. JUSTICE SALAHUDDIN PANHWAR**

Applicant : Ali Shan son of Ashraf Hussain,  
through Mr. Kaukab Salahuddin, advocate.

Respondents : (1). The Directorate of Intelligence &  
Investigation (IRS),  
(2). The State,  
through Syed Mohsin Imam, advocate for  
respondent No.1.  
Mr. Muhammad Javed K.K, Standing Counsel.

Date of hearing : 04.02.2016.

Date of Order : 12.02.2016.

**ORDER**

Applicant seeks bail in crime No.2/2015-16, under section 2(37), 3, 6, 7, 8, 10, 22, 23, 26 and 73 punishable under section 33(11) and (13) of the Sales Tax Act 1990.

2. Succinctly relevant facts of the case are that the respondent No.1 Directorate, on receipt of credible information regarding involvement of M/s. Azhaan Enterprises (NTN 3599257-3) in claiming bogus sales tax refunds against dubious purchase and exports, conducted scrutiny of monthly sales tax returns and other available record of the subject registered person which revealed that the said business was registered for sales tax on 30.09.2010 with principal business activity as wholesale on a fee or contract basis and other activity as Exporter/Importer. Since its registration the registered person has claimed sales tax refunds of an aggregated amount of Rs.48.858 million out of which refund of Rs.41.48 has

been granted to the registered person. During inquiry about genuineness of the refund claims of the said registered person it was found that the subject unit has claimed input from steel sector and P, scrap. During further investigation it revealed that the illustration shows that the registered person has been claiming input of steel related raw material and plastic scrap from various suppliers and then claimed refund of sales tax on the basis of inputs. However, since the registered person is not engaged in any manufacturing activity, therefore, in order to substantiate consumption of inputs/raw material in exported goods and in support of refund claims as exporter, the registered person submitted fabricated/dummy cash memos/ bills of so called processing charges from unregistered/ unverifiable persons which have no indication that what goods have been processed/ produced out of which inputs/raw materials. During further investigation it revealed that during September 2013 to June 2015 registered person has been filing sales tax returns with no sale purchase activity but suddenly from July 2015 to September 2015 made heavy imports of textile related goods/accessories of worth Rs.242.00 million without declaring any sales of goods. The applicant Ali Shan disclosed that he used to purchase steel sheets and get it processed from market to convert it into steel racks and table round stands and then export the same but he could not explain satisfactorily about export of machinery and caterpillar wheel loader and claiming refunds against steel raw materials on the basis of such exports. FIR was lodged, hence this bail application.

3. The learned counsel for applicant has contended that applicant has been falsely implicated in this case as none of the provisions of the Sales Tax Act 1990, as invoked in the FIR and

interim challan, is attracted; investigating officer has failed to provide any prima facie evidence that any false or forged documents have been submitted by applicant and all the GDs on which export has been made is verifiable from the Customs, PRAL data alongwith the examination report endorsed by the Customs authorities, that Form "E" submitted in respect of the export made is also verifiable from the concerned issuing banks and the remittance of foreign exchange proceeds amounting to US\$ 3,792,152/-. Lastly he contended that there is no likelihood of the absconding or tampering the prosecution witnesses, as the whole evidence is documentary in nature and in the possession of the prosecution, therefore, bail may be granted to applicant.

4. Learned counsel for the Directorate of I.& I. (IRS) has contended that the specific role has been assigned to applicant and he is guilty for evading tax and caused sufficient monetary loss to the public exchequer, hence no case for bail is made out.

5. I have considered the arguments advanced on behalf of the parties and gone through the material available on record. The record shows allegation against applicant is that of claiming refund of sales tax on basis of inputs of steel related raw material and plastic scrap on basis of *bogus* thereby guilty of evading taxes. There is no denial from side of the applicant to the effect that he claimed refund on basis of *input* which had burdened him to *prima facie* establish that invoices, so produced must have *strictly* been within meaning and object of Section 23 of the Sales Tax Act 1990 which appears to be lacking because the cash memos/ bills of claimed processing charges are from unregistered / unverifiable persons and even have no indication that what goods have been processed/produced out of which inputs/raw materials. Further, the registered person has been

claiming input of steel related raw material and plastic scrap from various suppliers and then claimed refund of sales tax on the basis of inputs. It is however, *nowhere*, claimed that registered person is engaged in any manufacturing activity which *prima facie* brings providing clause of Section 2(17) to come into play which is:

‘Provided that for the purpose of ***refund*** under this Act, only such person shall be treated as manufacturer-cum-exporter who ***owns or has his own manufacturing facility*** to manufacture or produce the goods exported or to be exported’

6. The record further shows the present applicant used to purchase steel sheets and get it processed from market to convert it into steel racks and table found stands and then export the same without existing any manufacturing unit and claiming refunds of Rs.41.48 million. Such *undisputed* facts since establish violation of lines, so sketched by the Act, hence *prima facie* show existence of reasonable grounds to believe that applicant /accused is guilty of the offence with which he is charged. The prosecution has collected sufficient material against the present applicant and he is fully involved to connect with the present case. Such being one of the white collar crimes which are normally committed in panned manner which *ultimately* affect the public *even* indirectly hence mere plea of case one of documentary evidence shall not earn a right of concession of bail.

7. In view of aforesaid circumstances I do not find it a case of further enquiry as such the bail application of applicant having no merit is hereby dismissed.

**J U D G E**