

Stereo. H C J D A 38.

Judgment Sheet
IN THE LAHORE HIGH COURT AT LAHORE
JUDICIAL DEPARTMENT

W. P.No.20175 of 2012
(Alif Plastic Industry Vs. Federation of Pakistan etc.)

J U D G M E N T

Date of Hearing	15.01.2013.
Petitioner By:	Mr. Muhammad Noman Yahya, Advocate.
Respondents By:	Sh. Nadeem Anwaar, Advocate.

Ayesha A. Malik.J: Through the instant petition, the Petitioner has impugned the notices dated 28.05.2012 and 24.07.2012 issued under Section 38 of the Sales Tax Act, 1990 (the STA) by Respondent No.4. The Petitioner also impugns that the inquiry proceedings initiated by the Respondent No.4 pursuant to the said notices for being illegal and contrary to the statutory provisions.

2. Brief facts of the case are that the Petitioner is a tax payer of Respondent No.2 vide NTN No.0219047-8 and also registered with Sales Tax Department. He files his sales tax returns regularly. Notice was issued to the Petitioner on 28.05.2012 for conducting an investigative audit for tax for the period from 01.07.2009 to 30.04.2012. The Petitioner filed reply to the said notice on 26.06.2012. The Respondent No.4 declined the contentions of the Petitioner and issued another notice on 24.07.2012.

3. The case of the Petitioner is that the Respondents cannot select the Petitioner for audit without completing the audit under Section 25 of the STA. He argued that it is only upon the completion of the audit under Section 25 that investigative audit can be initiated under Section 38 of the STA. He next argued that in this regard, no audit has been made under Section 25 on the basis of which the decision could have been made to conduct an investigative audit under Section 38 of the STA. He argued that the purpose of the impugned notices was to

defeat the parameters laid down in judgment dated 10.05.2012 passed in W.P. No.393/2012.

4. Learned counsel for the Respondents argued that the notices under Section 38 of the STA were issued to investigate the tax fraud committed by the Petitioner. He maintains that the reasons have been stated in the impugned notices which inform the Petitioner about the reasons of conducting the said investigation. He also argued that the tax fraud does not fall within the parameters of the judgment dated 10.05.2012 passed in W.P. No.393/2012. The period for audit under Section 38 of the STA may overlap the period under Section 25 of the STA for the audit. However, the purpose of the audit is different and as such, the Respondents are well within the mandate of the law to carry out the investigative audit in order to establish whether a case of tax fraud is made out or not. At this stage, it was just a notice calling for documents and as such, there is no basis for the Petitioner to impugn the same as the Petitioner is under a statutory duty to maintain his record and the Respondents may call upon the Petitioner to submit the relevant record. He argued that the Petitioner is bound to produce its record for verification in terms of Sections 22, 23 and 24 of the STA.

5. I have heard the arguments advanced by learned counsel for the parties and also reviewed the record.

6. It is noted that this case was argued alongwith W.P. No.19819/2012. Although it was a connected matter with W.P. No.19819/2012, yet learned counsel for the Petitioner requested that his case be heard and decided separately from W.P. No.19819/2012.

7. The main issue in this case is with respect to the notices dated 28.05.2012 and 24.07.2012 that have been issued under Section 38 of the STA. Review of the record shows that through the impugned notice dated 28.05.2012, the Petitioner was informed that there is an

allegation “*making illegal input adjustments*” against the Petitioner, therefore, an inquiry has been initiated for which purpose, the record for the period from 01.07.2009 to 30.04.2012 in terms of the documents mentioned in the notice has been called for. Review of the reply filed by the Petitioner to this notice shows that the Petitioner essentially denied the submission of documents on the basis of Section 72 of the STA. In terms of the requirement for production of the record, the reply shows that the Petitioner states that it is maintaining the record and filing their tax returns. The Respondents again replied to this letter by re-ascertaining the request to provide the relevant record as maintained by the Petitioner.

8. The whole case of the Petitioner is premised on the argument that the Respondents cannot proceed under Section 38 of the STA on account of the decision dated 10.05.2012 in W.P. No. 393/2012. As I have already stated in my judgment of even date in W.P. No.19819/2012 that the main issue in this case is with respect to the impugned notice issued to the Petitioner under Section 38 of the STA calling for documents to be produced by the Petitioner for the period from 01.07.2009 to 30.04.2012. A review of the impugned notice dated 28.05.2012 shows that it provides that an investigation under Section 38 of the STA has been initiated and the documents stated in the notice are required for the purposes of the said investigation. A reminder was issued to the Petitioner on 24.07.2012, which also informs the Petitioners that in the event of non compliance, proceedings under Section 33(9) and 21(2) of the STA (suspension of registration) will be initiated.

9. The impugned notice was issued under Section 38 of the STA, which provides that:-

“38. Authorized officer to have access to premises, stocks, accounts and record.—(1) Any officer authorized

in this behalf by the Board [or the Commissioner] [***] shall have free access to business or manufacturing premises, registered office or any other place where any stocks, business records or documents required under this Act are kept or maintained belonging to any registered person or a person liable for registration of whose business activities are covered under this Act or who may be required for any inquiry or investigation in any tax fraud committed by him or his agent or any other person; and such officer may, at any time, inspect the goods, stocks, records, data, documents, correspondence, accounts and statements, utility bills, bank statement, information regarding nature and sources of funds or assets with which his business is financed, and any other records or documents, including those which are required under any of the Federal, Provincial or local laws maintained in any form or mode any may take into his custody such record, statements, diskettes, documents or any part thereof, in original or copies thereof in such form as the authorized officer may deem fit against a signed receipts.

(2) The registered person, his agent or any other person specified in sub-section (1) shall be bound to answer any question or furnish such information or explanation as may be asked by the authorized officer.

(3) The department of direct and indirect taxes or any other Government department, local bodies, autonomous bodies, corporations or such other institutions shall supply requisite information and render necessary assistance to the authorized officer in the course of inquiry or investigation under this section.”

Section 38 of the STA essentially lets the authorized officer have access to business or manufacturing premises, stocks, record or documents required under the law or maintained by the registered person, required for an inquiry or investigation in any tax fraud committed by him, his agent or any other person. Therefore, Section 38 of the STA requires that a notice be issued to the registered person before entering into its premises or the office or any other place where the stocks, accounts or record is kept. Such a notice must state the reasons for entering into the premises of the registered person. In terms of the two cases relied upon by the learned counsel for the

Petitioner, the requirement of a notice is essential under Section 38 of the STA as the authorized officer must inform the registered person that he is going to enter upon his premises to remove goods or record from his premises and the reasons for needing to enter or seizing the record. As such Section 38 of the STA and the case referred to do not relate to the case at hand, where a notice has been issued simply calling for the record of the Petitioner.

10. Section 25 of the STA provides that a person is required to produce the record and the documents when required by the Commissioner, which are in his possession or control. Sub-Section 2 of Section 25 of the STA provides that the officer of the Inland Revenue authorized by the Commissioner Inland Revenue may conduct an audit. The proviso of this section states that:-

“Provided that in case the Commissioner has information or sufficient evidence showing that such registered person is involved in tax fraud or evasion of tax, he may authorize an officer of Inland Revenue, not below the rank of Assistant Commissioner, to conduct an inquiry or investigation under Section 38”

Therefore, the need to conduct an inquiry or investigation against a person thought to be involved in a tax fraud or evasion of tax is provided for under Section 25 of the STA. This means that an inquiry can be initiated to investigate tax fraud. In the instant petition, the Respondent No.4 issued a notice to the Petitioner calling for the record. As such he has not acted in a manner contrary to Section 38 of the STA, which specifically deals with access into the premises of a registered person. The impugned notice has been issued as a preliminary step to the investigation simply calling for the record. Reference to Section 38 of the STA on the notice puts the Petitioner to notice that there is an inquiry or investigation for tax fraud. It is noted that the show cause notice itself details the nature of the fraud that is under investigation. This means that the Respondents have a reason to

investigate the record of the Petitioner. Hence the impugned notices do not in any manner offend the mandate of Section 38 of the STA.

11. Furthermore, this is an investigative audit looking into a potential case of tax fraud. At this stage, the Respondents are merely conducting an inquiry for which they require the documents. All the reasons necessitating the audit are contained in notice dated 28.05.2012. Hence the facts of this case do not attract the parameters of judgment issued in W.P. No.393/2012. The judgment passed in W.P.No.393 of 2012 deals with the composite audit where the persons are selected randomly for audit under Section 25(2) of the STA. This is not a case of random selection or composite audit but one of tax fraud being a specific allegation against the Petitioner. Mere issuance of the impugned notices does not mean that a case of tax fraud has been decided against the Petitioner. As such the impugned notice does not adversely affect any right of the Petitioner. No illegality is made out. Case does not call for interference in constitutional jurisdiction.

12. Therefore, there is no merit in this petition and the same is **dismissed**.

(AYESHA A.MALIK)
JUDGE

Announcement in Open Court on _____.

Judge