

## **TaxHelpline 2013/207**

### **LAHORE HIGH COURT**

Writ Petition No.6461 of 2005, heard on 19th November, 2012

Before Umar Ata Bandial, C.J

Kh. Saeed-uz-Zafar for Petitioner. Ch. Muhammad Khalid for Respondents

**JAMAL PIPE INDUSTRIES (PVT.) LTD. and others**

**Vs**

**SUPERINTENDENT INTELLIGENCE and others**

#### **JUDGMENT**

UMAR ATABANDIAL, C.J.---This matter has been remanded to the High Court by the Hon'ble Supreme Court vide order dated 2-3-2011 passed in C.P. No.260-L of 2009. The sole ground on which the matter has been returned to the High Court is that in a criminal matter the viewpoint of the State ought to have been taken into consideration by the learned Single Judge on 18-11-2008 whilst quashing the F.I.R. No.21-1998 dated 6-1-1998 alleging violation of various sections of the Sales Tax Act, 1990 ("Act") by the petitioner company and its management.

2. The learned Deputy Attorney General appeared in these proceedings on 19-6-2012 and on behalf of State adopted the stand taken by the departmental counsel.

3. The primary contention by learned counsel for the petitioner is that the respondents had violated the provisions of sections 40 and 40-A of the Act by conducting a raid and search without warrant. This ground had prevailed before the learned Single Judge for quashing the F.I.R. Presently, learned counsel for the petitioner also urges that the challan has been framed in the present case after a lapse of seven years which is a sufficient ground for quashing the F.I.R. He has relied on a number of judgments supporting that principle including *Moosa v. The State* (1991 PCr.LJ 361) and *Muzammil Shah v. The State* (1991 MLD 1944). The references all pertain to offences committed under the Pakistan Penal Code ("P.P.C").

4. To the mind of this Court in a case involving tax default or tax fraud, the examination of the record can involve its analysis in a manner quite distinct from a police investigation of a routine offence committed under the P.P.C. In the present case, the offences alleged are laid down in the Act and although investigations to be conducted by Sales Tax Authorities are not strictly regulated by Criminal Procedure Code, however, learned counsel for the petitioner is justified in observing that the element of continuity and expedition in the completion of the prosecution stage as a due process safeguard must be observed even in the tax investigations. However, that point is a matter for the trial court to determine because after the finalization of the challan, entire record is now before the trial court. It is the trial court that can examine whether the investigative steps or the evidence collected during the investigation is either fabricated or it is manipulated or otherwise defective. That exercise cannot be conducted by this Court in its constitutional jurisdiction. As noted above tax investigations are likely to involve deeper deliberations and would require more time than the ordinary criminal investigations. It is probably for that reason that the learned Single Judge in the first round of litigation has not taken note of delay in filing the challan.

5. On the second point regarding the lack of a search warrant with the respondent authorities before their entry into the premises of the petitioner and the collection of material records therefrom, learned counsel for the respondents has referred to the statement recorded by Muhammad Hussain Finance Manager of the petitioner company at the time of the arrival of the Sales Tax Authorities in the premises of the petitioner. He states that on 23-8-1997 Assistant Collector Sales Tax, Sheikhpura Division along with Superintendent Sales Tax, Shahdara Circle arrived at the Factory and asked for the sales tax record of the unit. Upon inability of the witness to present such record on account of the same being retained by the Factory Manager, Tariq outside the factory, the sales tax officers took into possession the private factory record against receipt. The recovery memo. for the said record dated 23-8-1997 is also filed with the reply/para wise comments of the respondent tax authorities. This record contains sales book, raw-material purchase register and similar records maintained privately.

6. Learned counsel for the petitioner has read from the F.I.R. to allege that the collection of the said record was done by way of search and seizure. The relevant part referred by him in the F.I.R. is as follows:--

"The sales tax staff along with the Assistant Collector Sales Tax Sheikhpura Division visited the unit, as prescribed Sales Tax record was not available so the private record of the unit was taken into custody after proper recovery memo".

He submits that the F.I.R. was lodged on the allegation that the petitioner had been "engaged in massive evasion of Sales Tax through clandestine supply of goods without payment of tax leviable thereon". Accordingly, he concludes that private sales tax record was lying concealed in the factory which was searched and seizure by the tax authorities contrary to the provisions of sections 40 and 40-A of the Act. These provisions require necessarily a search warrant before the raiding party can recover any records from an assessee.

7. Reference has been made to a number of judgments but both the learned counsel have relied on Messrs Food Consults (Pvt.) Ltd. Lahore and others v. Collector (Central Excise and Sales Tax) Lahore and 2 others (2004 PTD 1731) which was affirmed by the Hon'ble Supreme Court in Collector of Sales Tax and others v. Messrs Food Consults (Pvt) Ltd. and another (2007 PTD 2356). In this case the F.I.R. was quashed on the ground that the necessary search warrant was lacking.

8. The point of importance in the present case is whether the collection of the record by sales tax authorities was during a search and seizure conducted by them. To the mind of this Court, a search by the sales tax authorities involves surprise and certain degree of coercion in the face of some resistance by an assessee by way of concealment or refusal.

9. In the present case, the alleged search team comprised of only two persons. That contingent was not in the mind of the Court large enough to constitute a raiding party which should include persons stationed outside the premises who would prevent anything from being taken away. Secondly the statement by the Finance Manager suggests that force or coercion was not used to obtain the private record. In fact on the inability/refusal to provide the sales tax record, it appears that the tax officers took into possession the private record that was made available. There is nothing on record suggesting that such private record was kept in concealment to avoid detection. Consequently upon a closer analysis of the facts of the case, the principle laid down in the aforementioned two judgments is not attracted.

10. Be that as it may, the first point of objection, namely, seven years of delay in finalization of the challan has a substantive content. In every criminal prosecution, whether it is by tax authorities or police authorities, the criminal jurisprudence requires material investigation to be completed expeditiously. Delay causes prejudice to an accused apart from permitting incriminating evidence either to be destroyed or to be manufactured. This question is one for the learned trial court to consider at the time of trial.

## 11. Petition dismissed.



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