

Taxhelpline Case No. 141 of 2013

[SUPREME COURT OF PAKISTAN]

Civil Petition No. 1774-L of 2009 (Against the Judgment dated 17.6.2009 of Lahore High Court, Lahore passed in WP No. 3101/2003), decided on 2nd July, 2012

SUPREME COURT OF PAKISTAN

Mr. Justice Mian Saqib Nisar and Mr. Justice Sh. Azmat Saeed

Mr. Sajid Mehmood Sheikh, ASC

M/s. Colony Industries (Pvt.) Ltd

Vs

Federation of Pakistan and others

ORDER

MIAN SAQIB NISAR. J.--(1). After the sale tax audit of the petitioner having concluded and his liability settled, the Collector, Sales Tax and Central Excise vide order dated 25-02-2003 directed for re-audit; the contents whereof reads as below:-- "Audit of M/s Sheikh Spinning Mills Ltd, Aiwan-e-Science Building Shakra-e-Jalal-ud-din Roomi Road, Lahore. Registration No. 03-05-5202-103-91 was conducted for the period 01.10.1997 to 30.6.2002. Soon after completion of audit a secret information was received that the registered person has evaded sales tax. Para 10 of the audit report also indicates that the registered person has been dealing with suspicious units. On the basis of these special circumstances I am satisfied that- second audit of the registered person for the period 01-10-1997 to 30-06-2002 is necessary. Audit Division-I is accordingly instructed to carry out this audit".

This order when challenged by the petitioner in the constitution petition, has been upheld through the impugned judgment the

reasoning that certain elements of fraud etc. on petitioners part came to light, on account of the utilization of the bags and also preparation of some fake and forged invoices, therefore, the constitution petition was dismissed?

2. Learned counsel for the petitioner by relying upon the cases reported as Messers Faisal Enterprises Vs. Federation of Pakistan through Ministry of Finance Islamabad and 4 others (2003 PTD 899) and Messers Muskzar Knit-wears (Pvt.) Ltd., through Chief Executive, Lahore Vs Federation of Pakistan. Ministry of Finance, Economic Affairs and Statistics (2004 PTD 714) has argued, that second audit as a matter of course is not permissible under the law and the present cast: does not fall within any exception thereto; that before the second audit could be directed, the petitioner should have been confronted with the material/information on account of which it was justified. It is also stated that as per the provisions of Section 24 of the Sales Tax Act, 1990, the petitioner-company would only require to keep its record intact till five years and now such record shall not be available for the purposes of audit.

3. Heard there is no bar or strict rule that second audit cannot be ordered. In any case, where the foundation of the re-audit is based upon fraud undoubtedly re-audit can be ordered. In this case the order of the Collector, reproduced above, postulates the element of fraud and it is settled law that fraud vitiates most solemn proceeding and any order procured through fraud cannot be protected, thus the case covered by and was within the exception to the general rule; the afore-cited dicta are distinguishable on their own facts. As regards the question about the maintaining of the record for five years, suffice it to say that it shall be a relevant factor during the course of audit and on this account also the impugned judgment of Lahore High Court as also the order of the Collector cannot be interfered with. Resultantly, this petition has no merit and is accordingly dismissed.

Leave refused

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