

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT:

MR. JUSTICE MIAN SAQIB NISAR
MR. JUSTICE SH. AZMAT SAEED

CIVIL PETITION NO.1774-L OF 2009

(Against the judgment dated 17.6.2009 of Lahore
High Court, Lahore passed in WP No.3191/2003)

M/s Colony Industries (Pvt) Ltd

...Petitioner

VERSUS

Federation of Pakistan and others

...Respondents

For the petitioner: Mr. Sajid Mehmood Sheikh, ASC

For the respondents: Not represented


Date of hearing: 02.07.2012

ORDER

Mian Saqib Nisar, J.- After the sale tax audit of the petitioner having concluded and his liability settled, the Collector, Sales Tax and Central Excise vide order dated 25.2.2003 directed for re-audit; the contents whereof reads as below:-

"Audit of M/s Sheikh Spinning Mills Ltd, Aiwan-e-Science Building Shahra-e-Jalal-ud-din Roomi Road, Lahore. Registration No.03-05-5202-103-91 was conducted for the period 1.10.1997 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 1.10.1997 to 30.6.2002 is necessary. Audit Division-I is accordingly instructed to carry out this audit"

ATTESTED


Superintendent

Supreme Court of Pakistan

This order, when challenged by the petitioner in the constitution petition, has been upheld through the impugned judgment on the reasoning that certain elements of fraud etc. on petitioner's 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 Messrs Faisal Enterprises Vs. Federation of Pakistan through Ministry of Finance, Islamabad and 4 others (2003 PTD 899) and Messrs 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 case 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 proceedings 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

ATTORNEY

Supervisor

Supreme Court of Pakistan

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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



Sd/- Mian Saqib Nisar, J
Sd/- Sh. Azmat Saeed, J

CERTIFIED TO BE A TRUE COPY

[Signature]
15/7/12
Superintendent
Supreme Court of Pakistan.

LAHORE

2nd July, 2012

Not Approved For Reporting

Ghulam Raza/*

[Signature]
23/7/12

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