

IN THE LAHORE HIGH COURT, MULTAN BENCH, MULTAN

No. 17782 /Writ

Dated 21-03 2022

From

The Deputy Registrar (Judicial),
Lahore High Court,
Multan Bench, Multan.

To

1. Federation of Pakistan, Islamabad through its Secretary.
2. Chief Commissioner Inland Revenue, RTO, Multan.

16 APR 2022
M(L)

Chief (L-I)
Jt(SC)
Jt(A)

Subject:- W.P. No.10030-19

(L-II)
(L-III)

Famous Minta Foods

FOP

Memo

Place on website and circulate, also place on CIR (A), FSD legal whatsapp group.

I am directed to forward for information and immediate compliance copy of this Court's Order/Judgment dated 13.10.21 passed in the above noted case.

19/4

[Signature]
21-03-22

Assistant Registrar (Writ)

For Deputy Registrar

[Signature]

FBR e-Box No. 79465-1
Received in MLJ Office on 19 APR 2022

FBR e-DOX Dy.No. 79465-1
Received in Chairman's Sectt
on 16 APR 2022

Plz do the needful, as directed by Member (Legal)

[Signature]
13/4

Judgment Sheet

IN THE LAHORE HIGH COURT,
MULTAN BENCH, MULTAN.

(JUDICIAL DEPARTMENT)

Writ Petition No.10030/2019

Famous Minta Foods (Pvt.) Ltd. Vs. Federation of Pakistan etc.

JUDGMENT

Date of Hearing	13.10.2021
For Petitioner	Mr. Tanveer Ahmad, Advocate.
For Respondents.	Mr. Muhammad Shaukat, Advocate for FBR.

MUHAMMAD RAZA QURESHI, J. Through this Writ Petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, the Petitioner has called into question the legality and propriety of Notice dated 14.06.2019 of selection for investigation under Section 38 read with Section 25 of the Sales Tax Act, 1990 (hereinafter referred to as "the Act") issued by the Commissioner, Inland Revenue Corporate Zone, Regional Tax Office, Multan for the tax year 01.07.2018 to 31.05.2019. Since the common questions of law have been raised, therefore, this Judgment shall also dispose of the connected Writ Petition bearing No.7472/2019.

2. The Petitioner having Sales Tax Registration No:STRN-0400200000282 is, *inter alia*, engaged in the business of manufacturing of food products. Learned counsel for the Petitioner submits that the Impugned Notice under Section 38 read with Section 25 of the Act for conducting the audit is unconstitutional. According to the learned counsel the selection of case of the Petitioner for conducting audit without any reason or lawful justification is contrary to dictum laid

down by the Hon'ble Supreme Court of Pakistan and consequently, it has been prayed before this Court that the Impugned Notice may kindly be declared as illegal, unconstitutional and against the provisions of law.

3. Conversely, learned counsel for the Respondents submits that the submissions made by learned counsel for the Petitioner run counter to the mandate of Section 38 of the Act and the interpretation sought to be on Section 38 by the learned counsel for the Petitioner will render the provisions of section 38 as superfluous and without lawful purpose.

4. I have heard arguments of learned counsel for the parties and record in this regard has been perused. The main issue involved in the case is whether the Impugned Notice under Section 38 read with Section 25 has been issued without lawful justification and a just cause. The reply and parawise comments filed by the department reflect that the said selection was made on account of allegation that the Petitioner Company had shown huge input tax carryforward amounting to Rs.6,208,793/- during the subject matter tax period and in this regard, a Notice under Section 25 of the Act had already been issued to the Petitioner. For the investigation purpose, the Petitioner was directed to provide the record pertaining to purchase invoices along with purchase register, supply invoices along with supply register, debit and credit note and in case of sales and purchase return, party-wise detail of purchases, supplies along with numbers of payments under Section 73 of the Act in respect of Bank accounts etc.

5. In this regard, the provisions of Section 38 of the Act are reproduced hereunder:

"38. Authorized officers to have access to premises, stocks, accounts and records.--(1) Any officer authorized in this behalf by the Board for 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 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 statements, 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 and may take into his custody such records, statements, diskettes, documents or any part thereof, in original or copies thereof in such form as the authorised officer may deem fit against a signed receipt.

(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 authorised officer.

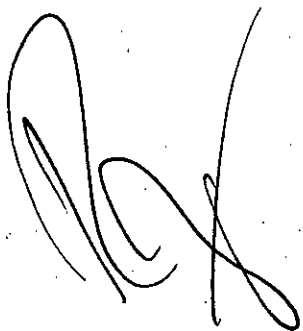
(3) The department of direct and indirect taxes or any other Government department, local bodies, autonomous bodies, corporations or such other institutions shall supply requisite information and render necessary assistance to the authorised officer in the course of inquiry or investigation under this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

6. Under the provisions of law, upon an allegation or a strong suspicion, the Respondent Department is authorized to requisition the record from the Petitioner under Section 38 of the Act, which the department was authorized by the Board to conduct audit and for the purposes of inquiry and investigation, the department can issue notice for requisitioning the record and take the same into their custody and the registered person is bound to furnish such information and explanation as may be asked by the authorized officer as envisaged in Section 38(2). The previous correspondence and the Sales Tax Returns reflect that the Impugned Notice by the Respondents is in accordance with law and within the contemplation of Section 38 of the Act and the Petitioner was bound to answer the queries and provide requisite

information. The Petitioner has failed to place on record any certificate of audit conducted by the Audit Officer of the Department. The simple defence of the Petitioner that it is maintaining the record and filed their tax return strictly in accordance with law is not sufficient in the said circumstances.

7. Section 38 of the Act essentially lets the authorized officer to have access to business or manufacturing premises, stocks, records or documents required under the law or maintained by the registered person required for any inquiry or investigation. In case of allegation of huge input tax carried forward by the Petitioner or his agent authorized Section 38 of the Act requiring 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 reason for entering into the premises of registered person. In the instant case, the Respondents issued notice to the Petitioner calling for the record only. As such, he has not acted in a manner contrary to Section 38 of the Act which specifically deals with the access into the premises of registered person.

8. The Impugned Notice has been issued as a preliminary step to the investigation simply calling for the record, putting the Petitioner to notice that there is an inquiry or investigation to tax fraud or evasion. At this stage, the Respondent Department is merely conducting an inquiry for which they required documents and mere issuance of Impugned Notices does not mean that a case of tax fraud has been decided against the Petitioner. As such the Impugned notice does not affect the rights of the Petitioner in any manner and the Writ Petition is in anticipation of a possible action to be taken against the Petitioner and any challenge or mere anticipation



of a possible action by the department does not create a cause of action for invoking Constitutional jurisdiction of this Court. Reliance in this regard is placed upon "Alif Plastic Industry versus Federation of Pakistan and others" 2013 PTD 713, "National Steel Rolling Mills and others versus Province of West Pakistan" 1968 SCMR 317 (2).

9. There is another aspect in the matter i.e. that the Petitioner does not place a challenge to the constitutionality of the provisions of Section 38 of the Act. They expect this Court by employing the interpretive tool of reading down or hold that section 38 is subject to the provisions of section 25 of the Act and can be set into motion only after the discovery of fraud or evasion of tax by the process of audit as contemplated under section 25 of the Act. Since Constitutionality and vires of Section 38 is not under challenge, therefore, it is safe to hold that Section 38 of the Act is, *intra vires*, the Constitution as held in the case reported as "Messrs Iqbal and sons through Authorized Representative versus Federation of Pakistan through Secretary and 3 others" 2017 PTD 590.

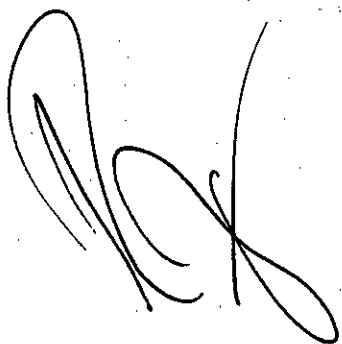
10. The category of persons who may be required for any inquiry or investigation in a tax fraud committed by him as mentioned in section 38 is a category which is not free from doubt. The case of this category of persons is relatable to the provisions of section 25 of the Act. As *per* the mandate of law, the Commissioner may direct an investigation or inquiry to be held upon sufficient evidence showing that a registered person is involved in tax fraud or evasion of tax. This is the only provision perhaps in the Act, 1990 which relates to the involvement of a registered person in a tax fraud or evasion of tax. Such an opinion can be formed by the Commissioner upon the coming in his hands of any record or documents



maintained by a registered person. Upon the formation of such an opinion the Commissioner may direct an inquiry or investigation under section 38 to be held. This is precisely the inquiry and investigation contemplated by section 38 while referring to it as one of the categories of persons in respect of whom a notice under section 38 may be served. Therefore, this is the only instance where the provisions of section 38 have a close nexus with the provisions of section 25 and both these provisions are to be read inextricably. In all other cases of categories of persons, section 38 is an independent self-executing provision and can be set in motion without recourse to section 25 of the Act, 1990. By way of elaboration, it may be stated that in case there are allegations of tax fraud or evasion of tax, the provisions of section 38 cannot be invoked unless an opinion has been formed under section 25 by the Commissioner concerned.

11. The powers of the authorized officer under section 38 are simply to inspect the goods, stocks, records, data, documents, correspondence and any other record or documents kept by a person in the course of his business and for this purpose, the authorized officer shall have free access to business or manufacturing premises, registered office or any other place where any stocks, business records or documents are kept or maintained. Therefore, the power is only confined to inspection of such record as to taking that record into custody in original or in the form of copies.

12. No other power is contemplated by section 38 to vest in the authorized officer. The person whose premises are sought to be inspected, is in turn, required to provide free access to the authorized officer and in case he fails to do so, that person shall be liable to be penalized and punished in terms of section 33 of the Act, 1990. At the cost of repetition it is held



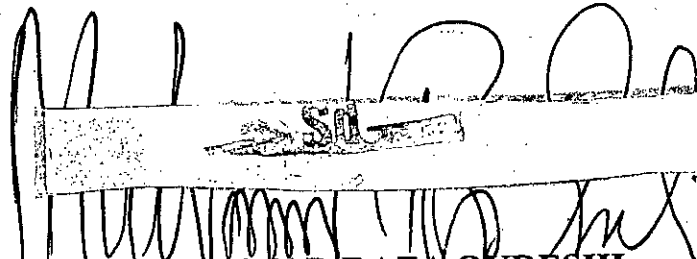
that the powers of the authorized officer do not travel beyond inspection of the record maintained by a person and cannot be stretched to be employed as a tool to harass that person or to use it as an element of intimidation for a collateral purpose.

13. The Impugned Notices under Section 38 read with Section 25 of the Act are held to be lawful and meeting the mandate of law contained in the provisions of Section 38 of the Act and same do not call for any interference by this Court in exercise of its Constitutional jurisdiction.

14. Consequently, these Petitions are declared to be meritless and same are **dismissed** accordingly.

TRUE COPY

EXAMINER COPY BRANCH
LAHORE HIGH COURT
MULTAN BENCH MULTAN
Ashfaq


MUHAMMAD RAZA QURESHI
JUDGE

BEFORE THE HONOURABLE LAHORE HIGH COURT,
MULTAN BENCH, MULTAN.

23

10030

WRIT PETITION NO. _____/2019

FAMOUS MINTA FOODS (PVT) LTD
PLOT NO. 22-II, INDUSTRIAL ESTATE, MULTAN
THROUGH ITS DIRECTOR

PETITIONER

VS

1. THE FEDERATION OF PAKISTAN, ISLAMABAD THROUGH ITS SECRETARY.
2. THE FEDERAL BOARD OF REVENUE, ISLAMABAD, THROUGH ITS CHAIRMAN
3. THE CHIEF COMMISSIONER INLAND REVENUE, RTO, MULTAN.
4. THE COMMISSIONER INLAND REVENUE, CORPORATE ZONE, REGIONAL TAX OFFICE, MULTAN.
5. THE ADDITIONAL COMMISSIONER, INLAND REVENUE, AUDIT RANGE, CORPORATE ZONE, RTO, MULTAN.
6. THE DEPUTY COMMISSIONER, INLAND REVENUE, AUDIT UNIT, CORPORATE ZONE, RTO, MULTAN.

RESPONDENTS

WRIT PETITION UNDER ARTICLE 199 OF THE CONSTITUTION OF
THE ISLAMIC REPUBLIC OF PAKISTAN, 1973.

Respectfully Sheweth: -

FACTS

1. The present petition is being instituted and filed under the signatures of Muhammad Khalid Saif Ullah Ch., who is fully conversant with the facts of the case and is fully authorized in this behalf through resolution dated 25.06.2019 to institute this petition and to sign and verify the same and to do all things necessary and incidental thereto.

(Copy of Resolution Attached as

Annexure A)

28515
26/06/19

