ORDER SHEET.
ISLAMABAD HIGH COURT, ISLAMABAD,
JUDICIAL DEPARTMENT.

Writ Petition No. 2974 of 2015

M/S FORTE ASSOCIATES through Fawad Ali Member of A.O.P

Versus

Federation of Pakistan through Chairman, Federal Board of Revenue, Islamabad and others.

S.No. of order/ proceeding	Date of order/ proceeding	Order with signature of Judge and that of parties or counsel where necessary.
(12)	30.03.2021	Mr. Ghulam Qasim Bhatti, Advocate for the petitioner. Mr. Muhammad Amin Feroz, Advocate for the respondents. Humayun Sarfraz, Senior Auditor, Directorate Intelligence & Investigation Inland Revenue, Islamabad.

In the instant writ petition the petitioner seeks quashment of FIR No. 07/2015 dated 19.06.2015, offences under section 2(37), 33(11) and 33(13) of the Sales Tax Act, 1990 lodged with Police Station Directorate of Intelligence and Investigation (Inland Revenue), Islamabad.

02. Learned counsel for the petitioner *inter alia* contends that the criminal prosecution under section 37-A of the Act can only be initiated after the tax liability of the taxpayer has been duly assessed under the Sales Tax Act, 1990 as provided under Section 11 of the Act. It is further contended that under section 37-A(4), the Commissioner at any stage can compound the offence if the taxpayer pays the amount of tax due alongwith default surcharge and penalty as is determined under the provisions of this Act, hence the facility of compounding the offence is available only after the assessment of tax under the Act.

Learned counsel for the petitioner has further contended that fines available under section 33 of the Act are dependent on the amount of "Tax Involved", hence no sentence can be awarded unless the tax is first determined, which is not the prerogative of the Special Judge, especially, when civil adjudication system for assessment is specifically provided for under the Sales Tax Act, 1990 and has prayed for quashment of the FIR.

03. On the other hand learned counsel for the respondents has argued that report under section 173 Cr.P.C in the instant case has been submitted in the Court of Special Judge Customs, Islamabad on 10.03.2021 and the next date of hearing is 08.04.2021.

04. Arguments heard record perused.

05. As the challan has been submitted in the Court of Special Judge Customs, Islamabad, so the petitioner has adequate and efficacious alternate remedy of moving an application under section 265-k Cr.P.C in the Court for his acquittal.

06. Guidance in this respect is taken from the case law reported as **PLD 2013 SC 401** ***(Director-General, Anti-Corruption Establishment, Lahore and others V. Muhammad Akram Khan and others)***, wherein it was held that "*The law is quite settled by now that after taking of cognizance of a case by a trial court the FIR registered in that case cannot be quashed and the fate of the case and of the accused persons challaned therein is to be determined by the trial court itself. It goes without*

saying that if after taking of cognizance of a case by the trial court an accused person deems himself to be innocent and falsely implicated and he wishes to avoid the rigours of a trial then the law has provided him a remedy under sections 249-A/265-K, Cr.P.C to seek his premature acquittal if the charge against him is groundless or there is no probability of his conviction."

07. It has also been held by the Hon'ble Supreme Court of Pakistan in case titled as *"Mst. Kaniz Fatima V. Muhammad Salim (2001 SCMR 1493)"* that "*where a particular statute provides a self-contained machinery for the determination of questions arising under the Act and where law provides a remedy by appeal or revision to another Tribunal fully competent to give any relief any indulgence to the contrary by the High Court is bound to produce a sense of distrust in statutory Tribunals and constitution petition without exhausting remedy provided by the statute would not lie in the circumstances"*. The same principle has been enunciated in a case reported as *PLD 2010 Supreme Court 969 titled as "Muhammad Abbasi V. S.H.O. Bhara Kahu and 7 others"*, wherein it was held that *"in our view where alternate remedy is more convenient, beneficial and likely to set the controversy at naught completely, jurisdiction under Article 199 cannot be exercised"*. In another case titled as, *"Rana Aftab Ahmad Khan V. Muhammad Ajmal and another" (PLD 2010 Supreme Court 1066)*, it was

held that "*we have considered the above and are constrained to hold that the constitutional jurisdiction (reference Article 199) of the High Court in all the cases cannot be invoked as a matter of right, course or routine, rather such jurisdiction has certain circumventions which the Court is required to keep in view while exercising the extraordinary discretionary power".*

08. Therefore, in view of the aforesaid, the prayer sought by the petitioner cannot be granted, as an efficacious and adequate remedy is available to him. In view of above, the instant writ petition is hereby ***dismissed*** being meritless, however, the petitioner shall be at liberty to avail the efficacious alternate remedy available to him under the code of Criminal Procedure, if so advised.

(TARIQ MEHMOOD JAHANGIRI)
JUDGE

Bilal