

**JUDGEMENT SHEET.**

**IN THE ISLAMABAD HIGH COURT, ISLAMABAD.**  
**JUDICIAL DEPARTMENT.**

W.P.No.3678/2015

M/s Haq Bahu Sugar Mills Private Limited  
Vs  
Federation of Pakistan etc

Petitioner by: Mr.Munawar us Salam,  
Advocate.

Respondents: Mr.Saeed Ahmed Zaidi,  
Advocate.

Date of hearing: 11.1.2016.

**AAMER FAROOQ, J.-** Through the instant petition, the Petitioner has assailed order dated 8.10.2015, passed by respondent No.2 whereby the case of the Petitioner was transferred from Large Taxpayer Unit (LTU) to Regional Tax Office.

2. The facts, in brief, are that the petitioner is an assessee and is subjected to repeated audits and investigations by officials/office of respondent No.2. An enquiry was initiated against the Petitioner under the provisions of Sales Tax Act, 1990 by Regional Tax Office on the ground that an ex-employee of the Petitioner filed a complaint before the Honourable Supreme Court of Pakistan and report was sought from respondent No.2, in this behalf. The initiation of enquiry was challenged by the petitioner by filing a Constitutional petition before the Lahore High Court (W.P.No.19658/2013) and upon its dismissal an ICA was filed (ICA No.1202/2015). Respondent No.2 vide office order dated 1.10.2015 transferred cases from various Regional Tax

Offices to LTU in the respective areas. The referred office order was issued under section 209(1) of the Income Tax Ordinance, 2001, section 30 & 31 of Sales Tax Act, 1990 and Section 29 of the Federal Excise Tax, 2009. The petitioner's name in the referred office order appears at Sr.No.38 and its case/enquiry was transferred from Regional Tax Office Lahore to LTU, Lahore. Subsequent to the transfer the petitioner was intimated about the change vide letter dated 30.10.2015, 10.11.2015 and 12.11.2015. The Deputy Commissioner Enforcement requested the Deputy Commissioner Zone-II Regional Tax Office Lahore for transfer of the record of the Petitioner's case. Through the impugned letter / order dated 8.10.2015 the enquiry/case of the petitioner was re-transferred to Regional Tax Office and in this behalf vide letter dated 11.11.2015, the petitioner was required to appear before the relevant officer.

3. The learned counsel for the Petitioner, inter alia, submitted that the re-transfer order has been passed u/s 209 of the Income Tax Ordinance, 2001, Sections 30 and 31 of the Sales Tax Act, 1990 and Section 29 of Federal Excise Act, 2005, however, the referred Provisions pertain to classes of persons and not to individual, therefore, the impugned re-transfer order is without jurisdiction. It was further contended that re-transfer order has been passed without issuing any notice and granting any opportunity of hearing to the Petitioner. In this behalf reliance has been placed on cases titled Qazi Abdul Jalil Vs N.W.F.P. Forest Development Corporation etc (2010 SCMR 1933), Liaqat Ali Chughtai Vs

F.O.P etc (PLD 2013 Lahore 413), M/s Dewan Salman Fiber etc Vs Govt. of NWFP etc (PLD 2004 SC 441) and Mrs. Anisa Rehman Vs P.I.A.C etc (1994 SCMR 2232).<sup>1</sup> Learned counsel further submitted that the impugned order has been passed in violation of Section 24-A of the General Clauses Act, 1887 as the same is devoid of grounds/reasons. Reliance was placed on case titled Government of Pakistan Vs Farheen Rashid (2011 SCMR I), Muhammad Din etc Vs Jamal Din etc (2007 SCMR 1091). It was contended next that the re-transfer order is in violation of Article 10-A of the Constitution as the same is contrary to the settled doctrine exercise of discretion in a structured manner. Reliance was placed on case titled Chairman, Regional Transport Authority Vs Pakistan Mutual Insurance Company Limited (PLD 1991 SC 14) and the recommendations made by Federal Tax Ombudsman viz-a-viz exercise of discretion by respondent No.2.

4. The learned counsel for respondents, inter alia, submitted that the instant petition is not maintainable inasmuch as the Directors of the Petitioner are fugitive from law. It was further contended that enquiry proceedings and subsequent show cause notice in pursuance thereof were initiated on the direction of Honourable Supreme Court of Pakistan. It was further contended that the Intra Court Appeal No.1202/2015 filed by the Petitioner was disposed of as having not pressed. Learned counsel further submitted that the exercise of power by the respondent No.2 was u/s 209 Income Tax Ordinance, 2001, Sections 30 & 31 of Sales Tax

Act, 1990 and Federal Excise Act, 2005 and under the referred Provisions respondent No.2 has ample power to transfer or re-transfer the cases.

5. The Petitioner in the instant petition, is aggrieved of order dated 8.10.2015 whereby show cause proceedings against it have been re-transferred to Regional Tax Office from LTU, Lahore. Previously on 1.10.2015 respondent No.2 by an office order under the relevant provisions of law had transferred a number of matters / cases pending before Regional Tax Office all over Pakistan to LTU established in the respective areas. In this behalf the learned counsel for Petitioner has placed on record the policy which guides the determination of cases to be adjudicated / determined by Large Taxpayers Unit. In this behalf the LTU handles all domestic taxes (Income Tax, Sales Tax and Federal Excise Duty) which qualify the criteria laid down for summon of cases in LTU and those which belong to various sectors including sugar. Respondent No.2 through the office order dated 1.10.2015 included the proceedings against the petitioner and transferred the same from Regional taxpayer unit Lahore to LTU, Lahore, however, while re-transferring the cases of the petitioner to Regional Tax Office Lahore it was only the petitioner whose cases has been re-transferred without assigning any reason. The impugned order does not provide any reason for re-transfer and this is in violation of Section 24-A General Clauses Act, 1887. In this behalf case law cited by learned counsel for petitioner is instructive. In case titled Government of Pakistan Vs Farheen Rashid (2011

SCMR 01) the Honourable Supreme Court of Pakistan held that public functionaries are bound to decide the matters before them after application of mind with cogent reasons within reasonable time. Similarly, in case titled Muhammad Din Vs Jamal Din (2007 SCMR 1091) it was observed that the courts have to decide cases after judicial application of mind with reasons. Generally the office orders do not require the opportunity of hearing to be granted to the persons concerned, however, in the instant case after the transfer of jurisdiction by respondent No.2 the case of the petitioner was being proceeded by LTU as is clear from the various letters appended with the petition, therefore, propriety demanded that before the passing of impugned order the opportunity of hearing should have been granted to the petitioner as its cases was the only one being re-transferred to Regional Tax Office. It is an established principle that even in administrative matters which adversely effect the rights of a person the principles of natural justice are to be complied with.

6. Respondent No.2 under section 209 of Income Tax Ordinance, 2001, Sections 30 & 31 Sales Tax Act, 1990 and Section 29 of Federal Excise Act, 2005 does not have the absolute jurisdiction to transfer or re-transfer cases. In this behalf Federal Tax Ombudsman while determining such question did observe that there are no rules framed by respondent No.2 for exercise of discretion which is to be exercised reasonably and fairly. The Honourable Supreme Court of Pakistan in case titled Chairman Regional Transport

Authority Vs Pakistan Mutual Insurance Company (PLD 1991 SC 14) held as follows:-

*A public office is a public agency or trust created in the interest and for the benefit of the people, and since an incumbent of a public office is invested with certain powers and charged with certain duties pertinent to sovereignty, the powers so delegated to the officer are held in trust for the people and are to be exercised on behalf of the Government or of all citizens who may need the intervention of the officer. Such trust extends to all matters within the range of the duties pertaining to the office. In other words, public officers are but the servants of the people and not their rules. A public officer is amenable to the rule which forbids an agent or trustee to place himself in such an attitude toward the principal or cestui que trust as to have his interest conflict with his duty. Where statute is silent with respect to the time within which an official act must be preferred, the law contemplates that the duty must be performed within a reasonable time. A public official who undertakes to perform an act, even an act which is completely discretionary, must do so reasonably and in complete good faith without such delay as would frustrate its ultimate objective. One who accepts a public office does so cum onere, or with the burden, and is considered as accepting its burdens and obligations with its benefits. He thereby subjects himself to all Constitutional and legislative provisions relating thereto and undertakes to perform all the duties of the office, and while he remains in such office the public has the right to demand that he performs such duties. The acceptance of every public office implies an agreement on the part of the officer*

*that he will execute his duties with diligence and fidelity. The duty of a public officer to fulfill the obligations of his office should take precedence over all other matters. Every public officer is bound to use reasonable skill and diligence in the performance of his official duties particularly where rights of individuals may be jeopardized by his neglect. In other words, he is bound, *virtue officii*, to bring to the discharge of his duties that prudence, caution, and attention which careful men usually exercise in the management of their own affairs.*

*Wherever wide-worded powers conferring discretion are found in statute, there remains always the need and the desirability to structure the discretion.*

*Structuring discretion means regularizing it, organizing it, producing order in it, so that decisions will achieve a higher quality of justice. The several instruments that are most useful in the structuring of discretionary power and open plans, open policy statements, open rules, open findings, open reasons, open precedents, and fair informal procedure. When legislative bodies delegate discretionary power without meaningful standards, administrators should develop standards at the earliest feasible time, and then, as circumstances permit, should further confine their own discretion through principles and rules. The movement from vague standards to definite standards to broad principles to rules may be accomplished by policy statements in any form, by adjudicatory opinions, or exercise of the rule-making power. When legislative bodies delegate discretions power without meaningful standards, administrators should develop standards the earliest feasible time, and then, as circumstances*

*permit, should further confine their own discretion through principles and rules.*

Even the Federal Tax Ombudsman while deciding complaint No.149/Islamabad/IT(128)/790/2010 observed as follows:-

*In view of the above judgment of the Supreme Court of Pakistan, the discretion, if any, available under the Sales Tax Registration Rules, 2006, is to be exercised according to some pre-determined parameters forestalling the chances of arbitrariness, willfulness, injustice and decisions contrary to the bonafide interest of the effected parties as the D.R admitted that no such parameters had been framed to exercise the aforesaid discretion, therefore, an appropriate course for the LTU authorities at Islamabad was first to confront the registered person with their contention about their business address and registered address etc. Had the complainant failed to satisfy the competent authority it could have taken any action deemed proper as this had not been done in this case, it lends a lot of credence to the AR's contentions that the FBR and the the authorities of LTU have committed an arbitrary and oppressive act to unilaterally, unjustifiably and unreasonably shift their records to the jurisdiction of LTU Lahore to buy time for implementation of the high court's directive about the refund claims of the company within the prescribed limit time of 60 to 90 days.*

7. The objection by the learned counsel for the respondents that the petition is not maintainable as some of the Directors are fugitive from law is not borne out from the record especially as learned counsel for the petitioner has



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placed on record copy of the order passed by Honourable Lahore High Court in Crl.Misc.No.15412-B-2015 whereby the three of the Directors of the Petitioner's company namely Fayyaz Qadeer Butt, Farrukh Iqbal and Azhar Qadeer Butt have been granted bail before arrest.

8. In view of above the instant petition is allowed and the impugned office order dated 8.10.2015 is set-aside.

**(AAMER FAROOQ)**  
**JUDGE**

**M.S.ZAKI.**

*Approved For Reporting*