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**JUDGMENT SHEET**  
**IN THE LAHORE HIGH COURT,**  
**BAHAWALPUR BENCH BAHAWALPUR**  
(JUDICIAL DEPARTMENT)

**Writ Petition No.2343 of 2025**

***Khursheed & Sons***

Vs.

***The Federation of Pakistan, Islamabad, through its Secretary, and others***

**JUDGMENT**

Date of hearing: -

08.12.2025.

Petitioner by: -

Mr. Tanveer Ahmad, Advocate.

Respondents by: -

Mr. Mahmood Ahmad Bhatti, Advocate.

**RAHEEL KAMRAN, J:-** By this petition in terms of Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, the petitioner challenges the search conducted by the Officer Inland Revenue, RTO Bahawalpur (respondent No.5) at the business premises of the petitioner under Section 38 of the Sales Tax Act, 1990 (“the Act, 1990”) on 10.04.2025.

2. Learned counsel for the petitioner submits that Section 38 of the Act, 1990 is merely a general enabling provision and cannot be exercised independently without invoking Section 40 of the Act, which is a special provision governing entry, search and seizure. He argues that the law, as settled by this Court in “Ghulam Hassan v. Federation of Pakistan through Ministry of Finance, Islamabad and 5 others” (**2021 PTD 1379**), mandates prior permission of the Magistrate before any forcible entry or retrieval of record from business premises. It is contended that no notice under Section 38 was issued, no prior authorization from the Magistrate was obtained, and the officers acted in a coercive manner, even taking cash without acknowledgment. Learned counsel further submits that the entire exercise is reflective of *mala fides*, arbitrariness, and lack of jurisdiction. He maintains that the petitioner had applied for revision of returns and

enhancement of capital but the respondents, instead of facilitating lawful processes, acted in haste to harass and threaten the petitioner.

**3.** Conversely, learned counsel for the respondents contends that the inspection was carried out strictly under Section 38 of the Act, 1990, which authorizes an officer of Inland Revenue to enter business premises and obtain relevant record for purposes of verification and audit. He maintains that Section 38 operates independently and does not require prior permission of the Magistrate, which requirement applies only to search and seizure under Section 40. It is argued that the officers possessed due authorization under Section 38 issued by respondent No.4, and that any claim regarding taking of cash or misconduct is factually incorrect and reflects *mala fides*. Learned counsel submits that the petitioner is attempting to obstruct lawful proceedings initiated to verify possible revenue loss due to discrepancies in sales, input tax, and non-revised returns, and that the petition being misconceived and premature, is liable to be dismissed.

**4.** Arguments heard. Record perused.

**5.** For a proper appreciation of the legal framework, it is appropriate to reproduce the relevant statutory provisions i.e. Sections 38 and 40 of the Act, 1990, as under: -

***"38. Authorised officers to have access to premises, stocks, accounts and records – (1) Any officer authorised in this behalf by the Board or the Commissioner shall have free access including real-time electronic 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 or whose 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.*

*(4) For the purpose of sub-section (1), the Board may make rules relating to electronic real-time access for audit or a survey of persons liable to tax.*

**39. ....**

**40. Searches under warrant.**—*(1) Where any officer of Inland Revenue has reason to believe that any documents or things which in his opinion, may be useful for, or relevant to, any proceedings under this Act are kept in any place, he may after obtaining a warrant from the magistrate, enter that place and cause a search to be made at any time.*

*(2) The search made in his presence under sub-section (1) shall be carried out in accordance with the relevant provisions of the Code of Criminal Procedure, 1898 (V of 1898). ”*

The statutory framework incorporates safeguards to ensure that Inland Revenue authorities exercise their powers within legal limits. Courts have consistently held that while revenue authorities possess broad authority to protect the public exchequer, such powers must be exercised fairly, reasonably and for purposes sanctioned by law. In the present case, the record does not disclose arbitrariness, *mala fides*, colourable exercise of authority or any overreach that may warrant interference in constitutional jurisdiction. No coercive action has been taken against the petitioner, nor has he been deprived of property or subjected to any measure beyond a routine inspection.

**6.** Parawise comments have been filed on behalf of respondents No.2, 3, 5 and 6, wherein it has been explained that, pursuant to information received from FBR Headquarters regarding the petitioner's declaration of an unusually large carry-forward of input tax in the return for January 2025, respondent No.5 prepared Desk Audit Report. On the basis of this report, the Commissioner Inland Revenue, Zone Bahawalpur (respondent No.4)

issued an authorization order dated 08.04.2025 directing verification of the petitioner's stock position. The relevant documents annexed with the parawise comments substantiate the respondents' stance and clearly show that the visit to the petitioner's premises was not abrupt or unwarranted but was undertaken pursuant to a structured audit process and a formal authorization issued under Section 38 of the Act, 1990. The authorization order itself sets out the objective basis for the action, that the petitioner had declared an exceptionally high carry-forward adjustment of Rs.185,352,613/- against stock values declared at Rs.1,029,736,739/-, necessitating verification. This constituted a reasonable and legally sufficient foundation for initiating inspection proceedings. Verification of such discrepancies is a routine and essential function of the tax administration to ensure accuracy of declarations. The Commissioner, therefore, acted within his statutory mandate in directing the designated officers to visit the petitioner's premises and examine the relevant record; their conduct was not personal or arbitrary but strictly pursuant to a lawful authorization grounded in identifiable facts.

7. The foremost question that arises in the instant case is whether proceedings under Section 38 could have been undertaken without first invoking Section 40 of the Act, 1990. The answer is in the affirmative. The scope, nature, and purpose of the two provisions are distinct. Section 38 empowers the authorized officer to access business premises, registered offices, stocks, accounts, and records of registered persons or those liable for registration. This power is exercisable even when no adjudicatory or penal proceedings are pending, and is intended to verify declarations, ascertain factual positions, examine stock levels, and review records maintained under federal, provincial, or local laws. In contrast, Section 40 contemplates search and seizure, but only where the officer has reason to believe that documents or things relevant to proceedings exist at a place, and then only after obtaining a magistrate's warrant. The two provisions thus operate independently: Section 38 allows routine inspections for verification and transparency, while Section 40 regulates coercive searches linked to pending or contemplated proceedings. The petitioner's argument

erroneously conflates the two provisions and overlooks this legislative design.

**8.** It is also relevant to underscore that Section 38 expressly authorizes Inland Revenue officers to access any business premises, manufacturing facility, registered office or any other place where stocks, business records or documents relevant under the Act, 1990 are kept. The authority extends not only to registered persons but also to persons liable for registration, and further, to any person whose business activities may be required to be examined for any inquiry or investigation in any tax fraud committed by him, his agent or any other person. This wide yet purpose-linked statutory mandate enables revenue authorities to identify tax evasion, detect fraudulent input adjustments, uncover unreported supplies, and generally ensure that the flow of tax to the exchequer is not impeded through concealment or manipulation.

**9.** Learned counsel for the petitioner has placed reliance upon *Ghulam Hassan's case (supra)*, contending that Section 38 of the Act, 1990 cannot be exercised independently without recourse to Section 40. The reliance is, however, misconceived. In *Ghulam Hassan's case*, this Court held that an inspection under Section 38 must be confined to records in plain sight or voluntarily produced, and officers cannot compel production of hidden documents or take custody of records through coercion; any material obtained by compulsion would be legally unusable. In the present case, the petitioner's own averments in the petition confirm that the record in question was not obtained by searching hidden locations but was presented by the petitioner's Manager himself voluntarily. In the absence of any evidence to suggest use of force or coercion by the tax officials, and the fact that the petitioner's manager voluntarily produced the records, the inspection clearly falls within the scope of Section 38, as interpreted in *Ghulam Hassan's case (supra)*. Thus, the observations in *Ghulam Hassan's case* regarding unlawful search and seizure are factually and legally inapplicable here.

**10.** It is further necessary to clarify that although Sections 38 and 40 of the Act, 1990 serve closely related purposes e.g., inspection,

verification, and retrieval of material relevant to the administration of sales tax, the Legislature has consciously delineated the scope and intensity of the powers exercisable under each provision. The coercive power of search and seizure available under Section 40, once a warrant has been obtained, is not available when an officer enters premises under Section 38, a position also supported by *Ghulam Hassan's* case (supra), relied upon by the petitioner. Under Section 38, the officer may access the premises, inspect records, and obtain material voluntarily produced or found in plain sight, but cannot compel production of concealed documents or seize property by force. These distinctions do not detract from the functional utility of either provision; rather, they affirm a calibrated statutory design in which both provisions operate in parallel, each addressing different facets of the verification framework. Redundancy cannot be attached to either provision. Accepting the petitioner's argument that a magistrate's warrant under Section 40 is a mandatory precondition for every visit would, in effect, deprive Section 38 of any operative field and render it redundant, an outcome that is impermissible under settled principles of statutory interpretation, which require that each provision be given meaningful effect. The Legislature's intent is clear: Section 38 facilitates routine, non-coercive inspections, whereas Section 40 governs intrusive searches justified by the statutory threshold of "reason to believe" and "relevant to any proceedings". The statutory scheme therefore does not support the view that Section 38 is subordinated to Section 40; both provisions coexist to serve distinct yet complementary purposes within the broader tax administration regime.

**11.** Although the sales tax is an indirect tax collected from end-consumers but deposited by the registered person, the taxpayer acts in the capacity of a collection agent of the State. This fiduciary role entails an obligation of full transparency and cooperation with lawful verification proceedings. A person holding funds belonging to the public exchequer cannot, in equity or in law, justifiably object to routine inspection proceedings meant to verify the correctness of declarations made by him. Rather, such proceedings serve the larger public interest by ensuring that

the tax collected from the public reaches the Treasury without leakage, suppression or misappropriation.

**12.** In view of the above, the proceedings under Section 38 were neither irregular nor excessive. The Commissioner had a proper factual and statutory basis for issuing the authorization; the officers acted strictly within the scope of Section 38; no measure of coercion, seizure, or forced retrieval was adopted; and at no stage were the intrusive mechanisms prescribed under Section 40 invoked. The petitioner, therefore, fails to demonstrate any infringement of legal rights.

**13.** For the foregoing reasons, petition in hand is dismissed being devoid of any merit.

**(ANWAAR HUSSAIN)**  
**JUDGE**

**(RAHEEL KAMRAN)**  
**JUDGE**

*Approved for reporting.*

**JUDGE**

*Azhar\**