

IN THE SUPREME COURT OF PAKISTAN

(Appellate Jurisdiction)

Mr. Justice Umar Ata Bandial, HCJ
Mrs. Justice Ayesha A. Malik
Mr. Justice Athar Minallah

CIVIL PETITION NO.1345-L OF 2021

*(Against the order dated 12.01.2021 of the Lahore
High Court, Lahore passed in STR No.142 of 2011)*

Commissioner Inland Revenue, Chenab Zone,
RTO, Faisalabad

...Petitioner(s)

Versus

M/s Rose Food Industries, Faisalabad & another

...Respondent(s)

For the petitioner(s): Mrs. Kausar Parveen, ASC
M.Ozair Chughtai, AOR.
Syed Hassan Sardar, Addl. Commissioner

For the respondents: Not represented

Date of hearing: 02.02.2023

ORDER

Athar Minallah, J.- The Commissioner Inland Revenue, Chenab Zone, Regional Tax Office, Faisalabad (**‘petitioner’**) has sought leave against judgment dated 12.01.2021 of the Lahore High Court, whereby it has decided the question of law proposed in the reference application filed under Section 47 of the Sales Tax Act, 1990 (**‘Act of 1990’**) against the Department.

2. M/s Rose Food Industries, (**‘respondent-company’**) was registered under the Act of 1990. An audit was conducted by the officials of the Sales Tax Department and, pursuant thereto, a show cause notice, dated 18.07.2002 was served. It was alleged that the respondent company had violated various provisions of the Act of 1990 and, resultantly, the supplies made by it were

suppressed. The allegation regarding suppression of supplies was based on comparison of the declared production and the units of electricity consumed by the respondent-company during the relevant period. While the adjudication proceedings pursuant to the show cause notice were pending, the respondent company filed a complaint before the Federal Tax Ombudsman. The latter, vide findings/decision, dated 12.07.2003 disposed of the complaint by making recommendations to the adjudicating authority. However, the adjudication proceedings culminated in passing of the Sales Tax Order-in-Original No.20 of 2003, dated 16.04.2003 ('first order in original'). The respondent company preferred an appeal before the Tribunal and the latter, through an interim order, directed the Collector, Sales Tax, Faisalabad to constitute a committee to examine the records of the respondent company, including another distinct entity, M/S Luster Enterprises ('recipient company'), to whom supplies were stated to have been made. Before the committee could submit its report, the Federal Board of Revenue set aside the first order in original vide order, dated 26.01.2004, in exercise of powers conferred under Section 45-A of the Act of 1990 and, consequently, the matter was remanded to the adjudicating authority. After completing the proceedings the adjudicating authority passed Sales Tax Order-in-Original No.12/2004, dated 29.09.2004 ('second order in original'). The appeal preferred by the respondent company was allowed by the Tribunal on the ground of procedural impropriety; failure to issue a fresh show cause notice. During the post remand proceedings the record of the respondent company was re-examined or, rather, subjected to an audit, which had led the sales tax officials to raise allegations distinct from the vague allegation stated in the show cause notice.

It was held that without issuing a fresh show cause notice the principle of due process had been infringed. The question of law proposed by the Department through the reference filed under section 47 of the Act of 1990 was decided against it by the High Court vide judgment dated 12.01.2021.

3. We have heard the learned counsels. The show cause notice was issued pursuant to an audit conducted by the sales tax officers. It does not appear from the record that, before issuing the show cause notice, audit observations were issued as required under section 25 of the Act of 1990. The show cause notice alleged suppression of supplies on the basis of comparison of the declared supplies and the consumption of electricity. After the first order in original was set aside by the Federal Board of Revenue and the matter was remanded, the adjudication officer had ordered re examination of the record maintained by the respondent company. The re examination of the record was in fact in the nature of conducting an audit under section 25 of the Act of 1990. This exercise had led the sales tax officers to raise fresh observations which were distinct from the allegations mentioned in the already served show cause notice. The respondent company, therefore, was at a disadvantage because it did not have a fair and reasonable opportunity to meet the observations since they were beyond the show cause notice which was being adjudicated. Moreover, the exercise of re examination of the record was in the nature of conducting an audit attracting the provisions of section 25 of the Act of 1990. This exercise, undertaken during the adjudication proceedings, had rendered the show cause notice as redundant. The principles of fairness

and due process are an integral part of the fundamental right guaranteed under Article 10 A of the Constitution. It guarantees that every person is entitled to a fair trial and due process for determination of rights and obligations. The issuance of a show cause notice is the most crucial in the context of a fair trial and due process. It enables a tax payer to precisely know what allegations are to be met, explained and answered to the satisfaction of the adjudication officer. It is the duty of the Department to ensure that a show cause notice is issued after a proper inquiry and investigation. It should be manifest from the contents of the show cause notice that it was issued after ascertaining the facts and the allegations are not vague or ambiguous. The charges or allegations should be specific, otherwise the taxpayer would be prejudiced and denied the right to a fair trial. As a corollary, the adjudication authority has to confine the proceedings to the specific charges and allegations clearly mentioned in a show cause notice and cannot adjudicate any charge or allegation beyond it. Adjudicating a charge or allegation not confronted in the show cause notice would not be sustainable in law.

4. In the case in hand, the re examination of the record required to be maintained by the respondent company under the Act of 1990, was in the nature of conducting an audit during the quasi judicial adjudication proceedings. It had resulted in raising of specific allegations which were not part of the show cause notice issued and adjudicated upon. The procedure prescribed under section 25 of the Act of 1990 was also not followed. The adjudicating authority had adjudicated upon matters without issuance of a fresh show cause notice. The invoices submitted by

the respondent company could not have been declared as 'fake/fabricated' nor the adjudication officer was justified in concluding that the respondent company had not made supplies to a distinct recipient company between May 1998 to April 2000 without issuing a fresh show cause notice within the prescribed limitation period. The recipient company was not privy to the adjudication proceedings nor was the respondent company put to notice regarding the observations of the sales tax officials who had subjected the records of the two distinct entities to scrutiny which was in the nature of conducting an audit. The High Court has correctly appreciated that the scrutiny or re examination of the record amounted to an audit and, therefore, the statutory requirements prescribed under section 25 of the Act of 1990 had to be complied with before adjudicating the tax liability. The learned counsel for the petitioner Department has argued that the adjudicating authority was competent to order scrutiny of the record and determine the tax liability on the basis thereof. She has strenuously contended that the exchequer would be exposed to suffering a loss because the issuance of a show cause notice at this stage may not be possible because of the limitation period prescribed under the Act of 1990. These arguments are misconceived. The authorities responsible for the levy and charge of tax under the Act of 1990 are vested with wide ranging powers to safeguard the interests of the exchequer. But such intrusive powers are not absolute, nor can they be used in an arbitrary manner. The exercise of the powers is subject to observing the principles of procedural fairness and propriety. The tax authorities are constrained to exercise powers and jurisdiction in accordance with the provisions of the Act of 1990 and having regard to the vested rights of the taxpayer.

5. We are, therefore, not inclined to interfere with the impugned judgment of the High Court. Since no question of law has arisen for our consideration, therefore, leave is refused and consequently the petition stands dismissed accordingly.

Chief Justice

Judge

Judge

Islamabad the,
2nd January, 2023
NOT APPROVED FOR REPORTING.
(M. Azhar Malik)