

IN THE LAHORE HIGH COURT, LAHORE

W.P. No. 131594-18

Present Mr. Justice Shahid Kazim

Petition Under Article 199 of the Constitution of
the Islamic Republic of Pakistan 1973.

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Party Name, Pray and Order Attached.

Shahid Kazim

IN THE LAHORE HIGH COURT, LAHORE
JUDICIAL DEPARTMENT

Case No. W.P No.131594/2018

Muhammad Usman Qayyum Vs Federation of Pakistan etc

S.No.of order/ Proceeding	Date of order/ Proceeding	Order with signature of judge, and that of parties or counsel, where necessary.
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03.04.2018 Mr. Muhammad Mohsin Virk, Advocate for the petitioner.
Mr. Tahir Mahmood Ahmad Khokhar, D.A.G.
Mr. Waqar Ahmad Mir, Advocate for PRA.

This petition challenges the notices dated 13.12.2017 issued by the relevant officer of the Federal Board of Revenue (FBR) under Section 11 of the Sales Tax Act, 1990 (Act, 1990). The said notice has been issued by the respondent No.6. Prior to this, a notice under Section 14 of the Act, 1990 was served on the petitioner by which the petitioner was required to get registered under the provisions of the Act, 1990.

2. The learned counsel for the petitioner contends that the business being conducted by the petitioner is of the nature of the services being rendered and is covered by Sr. No.37 of the second schedule to the Punjab Sales Tax on Services Act, 2012. Therefore, the petitioner is not liable to be registered with FBR and so the insistence of FBR for the petitioner to have itself registered is unlawful and has no basis in law. However, the learned counsel for the department, on the other hand, contends that the

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petitioner is manufacturer of copper wires and is thus liable to be registered under the Act, 1990. Since the petitioner has failed to get himself registered, FBR was constrained to compulsorily register the petitioner and an undertaking was given on 13.12.2017.

3. It seems that the issue relates to the precise authority of FBR and the Punjab Revenue Authority (PRA) and the question is as to which of these two authorities will exercise the power to require the petitioner to have itself registered and to pay sales tax. It is to be borne in mind that the petitioner pays the provincial sales tax to PRA. That is a question which needs to be resolved between the authorities and the case of the petitioner is that it has no cavil with having itself registered but clearly the petitioner cannot be compelled to get registration with both FBR as well as PRA. This contention of the petitioner has substance and after the devolution of certain powers upon the promulgation of the eighteenth amendment of the Constitution the sales tax on services has become the exclusive domain of the provinces and in case the petitioner renders those services and is covered by the Act, 2012, it is not liable to have itself registered with FBR. However, the petitioner cannot be burdened with a compulsory registration as well as an adjudicative process to

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which the petitioner cannot be subjected without reasonable cause and without lawful basis. The matter ought to be resolved and decided *inter se* FBR and PRA. This and similar other matters have arisen which give rise to issue of comparative jurisdiction of FBR and PRA. Doubtless, the tax liability of the registered persons in all such cases cannot be made a rolling stone and if a registered person like the petitioner is quite willing to pay the tax, then only one of the authorities can take cognizance of the matter and recover liability and the imposition. The said imposition cannot be permitted to be recovered by both the authorities viz. FBR and PRA.

4. In view of the above, this petition is disposed of with a direction to FBR to have the matter resolved with PRA within a reasonable period of time. In this regard, the relevant officer of FBR shall touch base with the officer of PRA and any further proceedings against the petitioner shall only be continued after such issue has been resolved between FBR and PRA. Until then the matter relating to the registration of the petitioner and the payment of sales tax in terms of the impugned show cause notice are held in abeyance.

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Authorized Officer
District - Sheharbada
10/11/18

Rafiqat Ali

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In Case No. 131594 of 2018
(SHAHID KARIM)
JUDGE

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Lahore High Court, Lahore

IN THE LAHORE HIGH COURT, LAHORE

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W.P. No. 131894 /2018

Muhammad Usman Qayyum

S/o Abdul Qayyum Butt

Proprietor of Usman Metal Works

Gala Bank Wala, Miansansi Road, Gujranwala.

PNTN No.3025485-0 (under the Punjab Sales Tax on Services Act, 2012)

Petitioner

VERSUS

1. The Federation of Pakistan, through its Secretary Revenue Division, Ministry of Finance & Revenue, Pak Secretariat, Islamabad.
2. The Federal Board of Revenue, through its Chairman, 5-Constitutional Avenue, Islamabad.
3. The Chief Commissioner Inland Revenue, Regional Tax Office, G.T Road, Gujranwala.
4. The Commissioner Inland Revenue, Zone-II, Regional Tax Office, G.T Road, Gujranwala.
The Deputy Commissioner Inland Revenue, Assessment Processing & Prosecution Cell, RTO, Gujranwala.
The Assistant Commissioner Inland Revenue, Broadening of Tax Base, Unit-01, RTO, Gujranwala.
7. The Government of Punjab, through its Secretary Law, Justice and Parliamentary Department, Lahore.
8. The Punjab Revenue Authority, through its Chairman, 5-B, Danapur Road, GOR-I, Lahore.
9. The Additional Commissioner, Punjab Revenue Authority, Gulshan Aziz Colony, Near Pind Bypass, Gujranwala.

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Respondents

v. (2009)100 TAX 81 (S.C. Pak) = (2009 PTD 1392), the Supreme Court of Pakistan following the decision in Murree Brewery Co. Ltd. case (ibid) and reiterated that the only exception to the general rule was a case wherein an order was wholly without authority or where a statutory functionary acted mala fide or in an unjust and oppressive manner. Under these circumstances, it was held that the High Court had the power to grant relief to the aggrieved person.

vi. The rule was further elaborated in (2012) 106 TAX 49 (S.C. Pak) = (2012 PTD 1374) where the tendency to bypass the remedy provided in the relevant statute and to press into service the Constitutional jurisdiction of the High Court was deprecated with the exception that when the impugned order/ action was palpably without jurisdiction or mala fide.

PRAYER

In view of the circumstances narrated above, it is humbly prayed that graciously allowing the present petition:

- ii. The notice dated 13/12/2017 u/s 11 of the Sales Tax Act, 1990 issued by the respondent No. 6 may graciously be declared as illegal, unlawful, void ab initio and without jurisdiction.
- iii. The notices u/s 14 of the Sales Tax Act, 1990 and registration of petitioner under rule 6 of the Sales Tax Rules, 2006 by the respondent No. 2 to 6 may also graciously declared as illegal, unlawful, void ab initio and without any jurisdiction.
- iii. Any other appropriate relief for which the petitioner is entitled may also allowed to the petitioner with costs.

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INTERIM RELIEF:-

It is further prayed that during the pendency of this writ petition, operation of the notice dated 13/12/2017 u/s 11 of the Sales Tax Act, 1990 may kindly be suspended and no coercive measures opted against the petitioner.

Petitioner
Through Counsel

MUHAMMAD MOHSIN YIRK
(Advocate High Court)

P.L.H/CC- 17790, CNIC No. 36103-0380866-1

Mobile No. 03334809030.

M. Adnan Sindhu, Aif Koor Saleemi, Irfan Ahmad, Jahanzaib Anjad & Irfan Chata
(Advocate H-C)(Advocate) (Advocate H-C)(Advocate)(Advocate)

TABARAK HUSSAIN
(Advocate High Court)

C.C. # PGW 47128

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Dated: 10-01-2018

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10/01/2018
Notary Public
Com. Punjab High Court, Lahore