

Before: Mr. Justice Nazar Akbar

2. Learned counsel for the Appellant/Customs Authorities has contended that the learned trial Court without examining the record passed the impugned order whereby Respondent was acquitted, therefore, the impugned order may be set aside.

3. Learned counsel for the Appellant/Customs Authorities has further contended that evasion of sales tax and income tax by the importer M/s.Shahzad Industries on the ground that the importer has no facility of manufacturing at his given address and is physically non-existent thus it played fraud and managed to get exemption of additional sales tax as manufactures, which otherwise is only available to the goods as one imported by a manufacturer for in house consumption in terms of provision (ii) to the Rules 58 (B) of the Sales Tax Special Procedures Rules, 2007. Similarly the above named importer also got exemption of Income Tax in excess of 5.5% income tax under SRO136(I)/2015 dated 13.2.2015 which exemption was only available to the manufacturers for industrial undertaking.

4. On the other hand, learned counsel for respondent has supported the impugned judgment and says that a comprehensive order has been announced by the learned Special Judge while acquitting the respondent. Learned counsel for the Respondent has also challenged the jurisdiction of the complainant to lodge the instant FIR. Learned counsel further contended that the jurisdiction of the Customs authorities in the matters involving the claims of exemption from payment of sales tax in terms of SRO 670(1)/2013 dated 18.07.2013 has already been decided by the Division Bench of this Court in the case of *Muhammad Measum and others ..Vs.. Federation of Pakistan, and others* [2015 PTD 702), wherein it has been held that Customs authorities have no jurisdiction to initiate any proceedings including registration of FIR in matters pertaining to collection of sales tax under Sales Tax Act, 1990. In support of his contention learned counsel has placed reliance on the following case laws:

- i. Muhammad Measum and others ..Vs.. Federation of Pakistan through Secretary and others (2015 PTD 702);
- ii. Babar Younus ..Vs.. The State (PTCL 2007 CL 71);
- iii. Zaheer Ahmed ..Vs.. Directorate General of Intelligence and Investigation—R and 4 others (PTCL 2015 CL 418);
- iv. Gufran Ahmed and another ..Vs.. The State (1983 P. Cr.L.J 620)
- v. Wang Xing ..Vs.. The State through Customs Department SRDP Sost (2019 MLD 1252)
- vi. Allah Bux and another ..Vs.. 1988 P.Cr.L.J 2154)
- vii. Taj International (Pvt) ..Vs.. The Federal Board of Revenue, etc. (PTCL 2014 CL 726)
- viii. (unreported) M/s. Muhammad Shahzad Industries ..Vs.. Federation of Pakistan and others CP No.D-2755/2019.

5. I have heard learned Spl. Prosecutor Customs and counsel for the Respondent and perused the record.

6. The perusal of impugned judgment shows that this was the case of no evidence against the respondent/accused, therefore, in the impugned order, learned trial Court has observed as follows: -

“It has further been observed that “Customs Authorities acted without any lawful authority and jurisdiction while registering FIR wherein different section and penal clauses of Sales Tax Act, 1990 and Income Tax Ordinance, 2001, had been incorporated. Once it was established that an Authority acted without jurisdiction & in excess of lawful authority, the aggrieved person was well within its rights to seek quashment/annulment of FIR and proceedings”.

“On the basis of broad line defined, it is safe to say that owing to evasion in payment of Sales Tax & Income Tax by the Importer and the allegation that the importer had no facility of manufacturing at his given address and is physically non-existent & imported goods have been sold out in the market & exemption of additional sales tax &

income which otherwise not available as are imported by a manufacturer for in house consumption, such do not fall within domain of the Customs Authorities which could be initiated by the Commissioner Inland Revenue, having jurisdiction in respect of Sales Tax & Income Tax, instant FIR is lodged incompetently & without lawful authority. The proceedings cannot be ended in conviction of the accused. The entire proceedings will be sheer wastage of time. It would be better to nip the issue in bud at this stage”.

The above observations of the learned trial Court are enough for acquittal of the respondent.

7. In view of the above, no case is made out for setting aside the impugned acquittal order. Therefore, this Special Criminal Acquittal Appeal is dismissed.

JUDGE

Karachi, Dated: 27.11.2020

SM