

IN THE HIGH COURT OF SINDH, KARACHI

Present: Mr. Justice Muhammad Junaid Ghaffar
Mr. Justice Agha Faisal

1.	Const. P. 5899/2021	M/s Younus Textile Mills Ltd. VS Fed. of Pakistan and Others
2.	Const. P. 6929/2021	M/s Al-Rahim Textile Ind VS Fed. of Pakistan and Others
3.	Const. P. 7455/2021	M/s M.N Textiles Pvt Ltd VS Fed. of Pakistan and Others
4.	Const. P. 7456/2021	M/s Proline (Pvt) Ltd VS Fed. of Pakistan and Others
5.	Const. P. 5231/2022	M/s Grace Knitwear Pvt Ltd VS Fed. of Pakistan and Others

Petitioners: Through Mr. Arshad Hussain Shehzad, Advocate.

Respondents: Through Mr. Rana Sakhawat Ali, Advocate.
Mr. Zubair Hashmi, Advocate.
Mr. Qazi Ayazuddin, Assistant Attorney General.
Mr. G. M. Bhutto, Assistant Attorney General.

Date of hearing: 11.01.2023

Date of Order: 11.01.2023

ORDER

Muhammad Junaid Ghaffar, J: Through these Petitions, the Petitioners have impugned respective notices issued under Rule 36 of the Sales Tax Rules, 2006 for post-sanction audit of their respective refund claims.

2. Learned Counsel for the Petitioners submits that the impugned notices have been issued by Deputy Commissioner, whereas, Rule 36 and the proviso thereof requires that Commissioner Inland Revenue has to carry out such exercise; hence, the impugned notices are without lawful authority and jurisdiction. Reliance was also placed on the judgment of this Court in the case of *Indus Motor Company Limited v Pakistan and others* (**2020 PTD 297**), wherein, the provisions of Section 25 of the Sales Tax Act, 1990, for conducting audit have been interpreted.

3. On the other hand, Respondents Counsel have sought dismissal of these Petitions as merely a notice has been issued for audit and no prejudice has been caused.

4. We have heard all the learned Counsel and perused the record. It appears that impugned notices have been issued to the Petitioners in terms of Rule 36 of the Sales Tax Rules, 1990 notified through SRO 555(I)/2006 dated 5.6.2006 and reads as under:-

“36. **Post-sanction audit of refund claims.**-(1) After disposing of the refund claim, the officer-in-charge shall forward the relevant file to the Post Refund Audit Division for post-sanction audit and scrutiny, which shall, inter alia, include verification of input tax payment by respective suppliers and compliance of section 73 of the Act 124[:]

Provided that scrutiny of the refund claims processed or sanctioned after the 30th June, 2014 shall be carried out on the basis of risk-based selection through computerized Post Refund Scrutiny (PRS):

[Provided further that where the Commissioner Inland Revenue has reason to believe, on the basis of some information, pre-determined criteria or otherwise, that a registered person, whose refund claim was processed or sanctioned after the 30th June, 2014, has been paid refund which was not admissible, he may direct through order in writing to conduct manual post- refund scrutiny of such claim.]

(2) The officer-in-charge of Post Refund Audit Division shall send his findings to the concerned Refund Division for further necessary action, as required under the law.”

5. It appears that the Petitioners before us sought refund of Sales Tax in terms of various online facilities introduced by FBR from time to time i.e. STARR/ERS/FASTER, through which the refunds were processed, sectioned and paid through Online Portal of FBR. Admittedly, all such refund claims had never been audited prior to its sanction and payment thereof. Rule 36 as above, provides a mechanism for post-sanction audit of such refund claims and insofar as the present controversy is concerned, the only argument which has been made on behalf of the Petitioners is to the effect that the second proviso requires that the Commissioner Inland Revenue is the competent authority to initiate any audit of the refund claims in question. However, when the said proviso is looked into, it appears that this contention of the Petitioners is misconceived. The said proviso reads that where the Commissioner Inland Revenue has reason to believe, on the basis of some information, pre-determined criteria or otherwise, that a registered person, whose refund claim was processed or sanctioned after 30.06.2014, has been paid refund which was not admissible, he may direct through order in writing to conduct manual post-refund scrutiny of such claim. This in our considered view, is to be done by

the Commissioner Inland Revenue by way of an administrative order and it does not, ipso facto means that the audit is also to be conducted by the Commissioner himself. It only requires an order by him to direct manual post-audit and scrutiny of the claim and if even if no such order for conducting manual audit has been issued by him, it can also be done post facto. Even otherwise, it has been repeatedly held that mere selection for audit does not cause an actionable injury to the Tax-payer¹.

6. Moreover, admittedly, the Petitioners have obtained refund of Sales Tax without going through the process of audit through Online Portal of FBR and in that case, if any audit is directed under Rule 36 for the audit of such refund claims, it does not amount to any adverse order; or a cause of action to raise a question regarding jurisdiction. The refunds, as a matter of routine, had always been subjected to pre-audit, and it is only a facilitation by FBR to the registered person that now under the online system, refunds are sanctioned and paid without pre-audit of the same. Therefore, in our considered view, if any audit is conducted in respect of the sanctioned and paid refunds, it otherwise does not cause any prejudice so as to challenge the same in Constitutional Jurisdiction. The conduct of audit in the instant matter is to check accuracy, truthfulness and the veracity of the claim of refund of the Petitioners which already stands paid; hence, it does not cause any prejudice to that extent.

7. In view of herein above facts and circumstances of this case, we do not see any reason to interfere with the impugned notices and the audit exercise being carried out by the Respondent Department; hence, these Petitions being misconceived are hereby dismissed. Office shall place copy of this order in all connected cases.

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Arshad/

¹ Commissioner Inland Revenue v Allah Din Steel & Re-rolling Mills (2018 SCMR 1328)