

**IN THE HIGH COURT OF SINDH, KARACHI**  
**C. P. NO. D-5270 of 2013**

**M/s Qadir Fabrics-----Petitioner**

**Vs**

**The Federation of Pakistan & Others-----Respondents**

**CP No: 5272 of 2013**

**Muneer Fabrics-----Petitioner**

**Vs**

**The Federation of Pakistan & Others-----Respondents**

**Date of hearing: 06.02.2015**

**Date of Order: 06.02.2015**

**Petitioner: Through Muhammad Afzal Awan Advocate.**

**Respondents: Through Mr. Abdul Aziz Buriro Standing Counsel.**

**J U D G M E N T**

Through aforesaid petitions, the petitioners have sought the following relief(s):-

- “i) Cheques obtained by the respondents from the petitioner are without lawful consideration, in absence of mandatory notice for payment or adjudged short payment under the mandate of Section 11 of the Sales Tax Act, 1990.
- ii) The act of omission or commission on part of the respondents with help of the Special Judge (Taxation) for recovery of money from the petitioner is unlawful and having no legal effect on the legal rights of the petitioner.
- iii) Direction to the respondents to return the cheques (Annexure “C”) back to the petitioner and not to fabricate / add names of the payee of their choice and not to present the name to the bank of the petitioner as to render the same as dishonoured.”

2. Briefly, the facts as stated are that both the petitioners who are registered under the Sales Tax Act, 1990 as manufacturers, have been nominated in FIR bearing No. 1/2013 under Section 2(37) of the Sales Tax Act, 1990 P.S. Directorate I&I-IR Karachi through interim challan dated 19.9.2013 filed before the Special Judge Customs & Taxation, Karachi, whereafter to obtain bail from the trial Court, the petitioners had submitted three post-dated cheques amounting to Rs. 64,41,046/- as detailed in Annexure "C" at page 51 in CP No: 5270 of 2013 and 5 five post date cheques amounting to Rs 64,49,314/- as detailed in Annexure "C" at Page 53.

3. Learned Counsel for the petitioners has contended that the said cheques were obtained forcibly by the prosecution with the help of the Special Judge Customs & Taxation, whereas, no such recovery could have been effected in that manner hence through instant petition the petitioners seek cancellation / return of the said post-dated cheques.

4. On the other hand the Standing Counsel has opposed the maintainability of aforesaid petitions and has contended that the question as to whether such cheques were submitted voluntarily or otherwise cannot be determined by this Court under its Constitutional jurisdiction.

5. We have heard both the learned Counsel and perused the record. It appears that an FIR bearing No. 1/2013 was registered against one Shabbir Hussain before the Special Judge Customs & Taxation under the Sales Tax Act, 1990, whereafter investigation was conducted and through interim challan dated 19.9.2013, various other persons, including the petitioners have been nominated in the said crime of tax fraud. It further appears that pursuant to nomination in the interim challan the petitioners in order to obtain bail after arrest before the Court of Special Judge Customs & Taxation at Karachi, had submitted post-dated cheques and had obtained bail from the said Court. Perusal of Annexure "C" (page 51) in CP No. 5270 of 2013 and Annexure "C" (Page 53) in CP No: 5272 of 2013, through which the said cheques were submitted for obtaining after arrest bail, it appears that the same were submitted voluntarily as no objection or reservation with regard to

them being furnished without prejudice, has been endorsed or mentioned on the said letters of the petitioners. After having perused the record we are of the view that since the bail had been obtained by the petitioners after furnishing post-dated cheques on their own, the objection being raised through aforesaid petitions appears to be misconceived and is without any justification, whereas the petitioners have neither annexed nor have challenged the bail order itself through these petition. It will be relevant to observe that petitioners have not sought declaration regarding legality or otherwise of the bail granting order passed by the Special Judge (Customs & Taxation), wherein, the petitioner deposited the cheques in favour of respondents. Whereas, there is no allegation by the petitioners that such cheques were obtained by Customs Authorities by force or under coercion. Moreover, the dispute regarding liability of the petitioners towards Sales Tax etc. is to be determined and decided by the forums provided under the relevant statute, where all such objections may be raised, which may be decided on their own merits.

6. In view of hereinabove facts and circumstances of the instant case, we are of the opinion that no ground for seeking any indulgence from this Court under its writ jurisdiction has been made out. Accordingly, both the petitions were dismissed by us vide short order dated 6.2.2015 and above are the reasons thereof.

JUDGE

JUDGE