

TERENCE J SIGAMONY

SC asks what necessitates arrest of taxpayer

ISLAMABAD: The Supreme Court questioned as to when the initiation of criminal proceedings and arrest, if any, are to be initiated against a registered trader or businessman for alleged tax fraud under the Sales Tax Act, 1990.

Justice Bandial noted that a businessman who has invested a huge amount to establish a factory or industry in the country will not run away. “We want to know the ingredients that necessitate arrest of the taxpayer. The discretion to arrest should clearly be specified,” he said and asked the Federal Board of Revenue (FBR) to submit a reply on it. If a businessman against whom it is alleged that he committed tax fraud is not cooperating then he could be arrested, the head of the bench remarked.

Justice Ijazul Ahsan said that Section 37A should not be used for arm-twisting. “We want that in the first step the businessman should not be arrested for alleged tax fraud,” said Justice Faisal, another member of the bench.

A three-member special bench heard Directorate of Intelligence & Investigation-FBR appeals against a Lahore High Court judgment. The case involves the matter of criminal liability of registered persons under the Sales Tax Act. The LHC judgment noted that unless the amount in tax fraud is determined, arrest of tax-paying businessman should not be caused.

The bench directed the FBR to file written replies on apex court’s queries and the guidelines given in Lahore High Court judgment regarding the arrest of registered traders or businessmen for alleged tax fraud under Section 37A of the Act.

Barrister Syed Ali Zafar, representing some of the registered manufacturing concerns, had submitted in his arguments that under the Sales Tax Act, before filing any criminal case against a person, it is incumbent upon the sales tax authorities to issue the manufacturer a show cause and give an opportunity to explain his position, and it is only after that the quantum of sales tax had been determined that the sales tax authorities can initiate both, civil and criminal proceedings, for recovery of the money and punishment, if any.

Zafar also argued that sales tax authorities, however, are misusing their powers to harass the business community and using the criminal action as a mode of recovery.

The court observed that the main purpose of the sales tax authorities was to recover the sales tax and the power of initiating criminal proceedings could not be used for harassing or blackmailing the businessmen. The court also observed that even if there was a criminal case against a registered person, there is prima facie no need to arrest a genuine entrepreneur and destroy his reputation and the discretion should be structured.

The court directed Barrister Zafar to continue his arguments on the next date of hearing and in the meantime the tax authorities have been directed to come up with recommendations of what guidelines are to be provided to structure the process of criminal investigations and prosecutions under the sales tax law.

Dr Tariq Masood, former employee of FBR whom the court had called as an expert to explain the mechanism adopted by the sales tax authorities for initiating criminal proceedings, said that for the arrest of registered person under the Sales Tax Act on the basis of material evidence, there has been reasons to be believed.

“We are envisaging for a system for more stringent check and balance,” he informed the bench.

The bench said that necessary safeguards should be taken for avoiding unjustified exposure or injury to registered taxpayers under Section 37A of the Sales Tax Act, 1990.