

IN THE HIGH COURT OF SINDH, KARACHI

C.P. NO. D- 6696 OF 2014

PRESENT:

**MR. JUSTICE AQEEL AHMED ABBASI.
MR. JUSTICE ARSHAD HUSSAIN KHAN.**

Khayaban-e-Iqbal (Pvt.) Limited

Vs.

Federation of Pakistan and others

Petitioner: Khayaban-e-Iqbal (Pvt) Ltd.
Through Mr. Taimur Ali Mirza, Advocate

Respondents: Federation of Pakistan & others
Through Mr. Meer Hussain, Standing Counsel

Date of Hg: 12.01.2017.

JUDGMENT

ARSHAD HUSSAIN KHAN, J. The petitioner through the instant constitutional petition has sought relief as follow:-

- i. *To declare that the suspension of the petitioner`s sales tax registration is illegal, arbitrary, vexatious, ultra vires to the constitution, void ab initio and without lawful authority and set aside/strike down the same.*
- ii. *Declare that the levy, charge and collection of Rs.7,183,168/= on its electricity bills for the months of August, 2013 to July, 2014 on account of 5% extra GST and 1% further GST as illegal, arbitrary, vexatious, ultra vires to the constitution, void ab initio and without lawful authority and set aside/strike down the same.*
- iii. *Restrain the respondents from suspending the sales tax registration of the petitioner except strictly in accordance with the law.*
- iv. *Direct the respondents to refund the amount of Rs.7,183,168/= to the petitioner levied, charged and collected from the petitioner on its electricity bills for the months of August, 2013 to July, 2014 on account of 5% extra GST and 1% further GST.*
- v. *Cost of the petition.*
- vi. *Grant any further relief to which the petitioner is found entitled to in the circumstances, in the interest of justice, equity and fairness.*

2. Brief facts as stated in the instant petition are that petitioner is a private limited company engaged in the business of real estate development, construction and imports and registered under the Sales Tax Act, 1990, as an importer with effect from 14.2.1998 vide Registration No.12-00-8428-008-64. In August, 2013 when the petitioner received its electricity bill for the billing month of August, 2013, it transpired that 5% Extra GST and 1% further GST has been charged, which is only chargeable on electricity bills of those persons who are not on the Active Taxpayer`s List, the petitioner approached KEL to ascertain why 5% extra GST and 1% GST had been charged on its electricity, whereas, the petitioner is on the Active Taxpayers` List. The KEL had informed that since the petitioner`s name was not appearing on the Active Taxpayer`s List, therefore, 5% extra GST and 1% further GST had been charged on its electricity bill. The petitioner then approached respondent No.1 (Ministry of Finance) in order to find out why the petitioner`s name was no longer appearing on the Active Taxpayer`s List. Upon enquiries, it transpired that petitioner`s sales tax registration had been suspended with effect from June 30, 2013 on the ground that the petitioner has failed to file sales tax returns for certain tax periods in years 2001, 2002, 2003, 2006, 2008 and 2009. It has been further stated that no notice (show cause or otherwise) was given to the petitioner either before or after its sales tax registration was suspended and no order for suspension was issued to the petitioner. According to petitioner, the suspension of the petitioner`s registration was illegal and unlawful as the petitioner filed returns for the period of September, 2008 to September, 2009 on 23.10.2013 and also paid a penalty of late filing being Rs.65,000/- (Rs.5000/- per return). As regards returns for the remaining period of 2001, 2002, 2003 and 2006,

according to petitioner, since the same were time barred under Section 24 of the Sales Tax Act, 1990, the petitioner by way of its letter dated 4.11.2013 informed respondent No.5 (Commissioner Inland Revenue Zone-II) of the said position and also apprised respondent No.5 that it had filed returns for the period from September, 2008 to September, 2009 along with penalty. Vide its letter the petitioner also requested that the suspension of its sale tax registration be recalled and its status be shown as `active` on the Active Taxpayer`s List. After a lapse of 7 months (from the date of having filed the sales tax returns for the period from September, 2008 to September, 2009), respondent No.4 (Commissioner Inland Revenue Zone-II) finally wrote a letter dated 29.5.2014 to the respondent No.3 recommending that the name of the petitioner be deleted from the list of suspended units and its status be updated in pursuance of Section 21(2) of the Sales Tax Act, 1990, read with Section 35 of the Sales Tax General Order 03/2004 dated 12.6.2004 and Rules 12(5) of the Sales Tax Rules 2006, and to restore the petitioner`s Sales Tax Registration status in FBR/STARR database. It is also stated that suspension of the petitioner`s sale tax registration was finally lifted on 11.7.2014, more than a month after respondent No.4 had recommended its revocation `with immediate effect` in his letter dated 29.5.2014. That the petitioner`s sale tax registration remained suspended for around 12 months when the petitioner had filed the returns for the period from September, 2008 to September, 2009 on 23.10.2013 and made good any non-compliance of the law and had also paid the penalty of non-compliance specified under the law. As a result of the illegal suspension of the petitioner`s registration an amount of Rs.7,183,168/- was levied, charged and collected from the petitioner on account of 5% extra GST and 1% further GST on its electricity bills for

the months of August, 2013 to July, 2014. According to petitioner, since the suspension of the petitioner's sales tax registration was not in accordance with law, therefore, the petitioner could not have been charged the extra GST and further GST. As a result, the petitioner approached respondent No.2 (FBR) for refund of the extra GST and further GST collected from it during the suspension of its sales tax registration on its electricity bills.

3. Upon notice of the present petition, the respondent Commissioner Inland Revenue filed para-wise comments wherein, while refuting the allegations leveled in the memo of petition, it is stated that the petitioner's company is registered with Sales Tax Department as Manufacturer / Importer but filing Nil/Null returns for a long time, which reflects that it was not involved in sales tax activity. However, perusal of huge amount of electricity bills paid during said period by the petitioner, it transpired that the petitioner is suppressing its taxable activity or claiming bill as registered person with the intention to defraud the department and to get the undue benefits and to claim illegal refunds. It is also stated that petitioner's Sale Tax Registration was suspended in accordance with law under Section 21(2) read with STGO No.35/2012 dated 30.06.2012 as the petitioner did not file the sale tax return during the aforesaid period. It is further stated that the electricity bills do not pertain to the petitioner as the bill for the month of August 2013 was issued in the name of Forum at forum's address. Subsequently, it was changed in the name of the petitioner and its address without any intimation to the department. It is also stated that petitioner has no justification for consumption of such huge quantity of electricity regarding electric bills against which he is

claiming refund. Furthermore, as per comments filed by respondents, a detailed scrutiny of petitioner's record is required regarding his electricity bills as on the one hand, the petitioner had shown its taxable activity as "Nil" and on the other hand, consumes huge electricity. It has been also stated in the comments that the claim of the petitioner regarding refund is baseless and there is no provision in Sales Tax Act regarding baseless refund.

4. We have heard learned counsel for the petitioner as well as learned Standing counsel and with their assistance perused the record.

5. The petitioner through the instant petition seeks refund of the extra GST and further GST collected / charged from the petitioner on its electricity bills during the period its sales tax registration was suspended on the ground that said suspension was not in accordance with law and the respondents are liable to refund said amount. On the other hand, the respondents have disputed the claim of the petitioner by alleging fraud committed by the petitioner to get benefits of illegal refund and asserted that extra GST and further GST was collected in accordance with law from the petitioner during the period the sale tax registration of the petitioner was suspended. From the perusal of record it appears that the petitioner's sales tax registration was suspended on the recommendation of respondent No.5 vide its letter C.No. CCIR/RTO-II/K/CNF/suspension/2012/3054 dated 12.12.2012 on account of non filing of sales tax returns of various tax years. Subsequently, the petitioner on 22.10.2013 filed sales tax returns of the defaulted period with penalty. The department upon receiving sales tax return of the defaulted period recommended the restoration of sales tax registration of the petitioner. There is nothing available on record,

which could show that the petitioner, after suspension of its Sales Tax Registration, had challenged the same for being illegal before the tax authorities or any other legal forum or Court of law. On the contrary, it appears that the petitioner duly accepted said position and filed the returns for the defaulted period along with penalty pursuant to which the Sales Tax Registration of the petitioner was restored. However, after restoration of Sales Tax Registration, the petitioner has started to agitate the suspension for being illegal and arbitrary and also demanding refund of extra GST and further GST collected/charged from petitioner on its electricity bills during the period its Sales Tax Registration remained suspended. In the absence of any order from competent forum regarding illegality of suspension of Sales Tax Registration of petitioner, it cannot be presumed that such suspension of the petitioner was patently illegal or amounted to abuse of authority by respondent, which could be treated nullity in the eye of law, so much so that any consequential payment of tax i.e. extra GST on account of delayed filing of return and tax, would also be treated as illegal and would eventually give right to the petitioner to seek refund of such payments by filing a Constitution Petition at this belated stage of proceedings. Learned counsel for the petitioner has not been able to assist this Court as to how the charging of extra GST and further GST from the petitioner during the period its Sales Tax Registration remained suspended can be treated as illegal or erroneous, particularly, when delay and default in filing return or making payments of extra GST is not disputed. Moreover, the claim of the petitioner is based on the allegations of fraud and arbitrariness on the part of respondents, which otherwise requires a detail scrutiny of controverted facts and examination of evidence, which exercise cannot be undertaken by this

court in exercise of its writ jurisdiction under Article 199 of the Constitution.

6. It may be further observed that the Article 199 of the Constitution casts an obligation on the High Court to act in aid of law and to protect the fundamental rights of citizens, however, within the framework of Constitution and law, and this extra ordinary jurisdiction of High Court can be invoked in extraordinary situation where there is inefficacious alternate remedy provided under law, whereas, the illegality of the impugned action of an authority can be established without any detailed enquiry into complicated or disputed facts. Reliance can be placed on the case of Anjuman Fruit Arhtian and others vs. Deputy Commissioner, Faisalabad and others (2011 SCMR 279).

7. The upshot of the above discussion is that we do not find any substance in the instant petition, which besides being misconceived in law, also attempts to agitate a grievance at a belated stage while bypassing the relevant forum, without any reasonable ground. We are of the considered view that the alleged claim of the petitioner is also controversial and requires evidence, which cannot be examined or decided by this Court under its constitutional jurisdiction. Accordingly, instant petition was dismissed in limine vide our short order dated 12.01.2017, and these are the reasons for such short order. However, before parting with the order, we may observe that the petitioner will be at liberty to seek redressal of its grievance, including the claim of refund, if permissible in law, before appropriate forum in accordance with the law. Needless to observe that observation made herein above are tentative in nature and will not prejudice the claim of the petitioner which may be examined by the relevant forum in accordance with law and on the basis of evidence in this regard.

JUDGE

Karachi;
Dated: _____

JUDGE