

IN THE HIGH COURT OF SINDH AT KARACHI

C.P.No.D-4394 of 2014

Present:

Mr. Justice Aqeel Ahmed Abbasi

Mr. Justice Abdul Maalik Gaddi

Ms. Lubna Pervaiz, advocate for the petitioner.

Mr. Haq Nawaz, holding brief for Mr. Pervaiz A. Shams Memon, advocate for the respondent.

Mr. Muhammad Javed K.K. Standing Counsel.

Date of hearing: **02.09.2016**

Date of order: **02.09.2016**

O R D E R

AQEEL AHMED ABBASI, J.: Through instant petition, petitioner company has impugned Show Cause Notice dated 23.07.2014 issued under Section 25 of the Sales Tax Act, 1990, and another notice dated 21.08.2014 issued under Section 11(2) of the Sales Tax Act, 1990, for selection of the case of the petitioner for audit for tax period July, 2012 to June, 2013, whereas, following relief has been sought:-

- a. *Declare the impugned notices bearing No.DCIR/AU-04/Z-II/RTO-II/KHI/2013-14/67 dated 23.07.2014 issued under section 25 of the Sales Tax Act 1990 for audit of the petitioner's case for the tax period July 2012 to June 2013 and No.DCIR/AU-04/A&B/Z-II/RTO-II/KHI /2013-14/130 dated 21.08.2014 issued under section 11(2) of the Sales Tax Act 1990 by the Respondent No.4 are unlawful, illegal, without jurisdiction and of no legal effect.*
- b. *Declare that after the insertion of sections 72B in the Sales Tax Act 1990 vide Finance Act 2010 only Respondent No.2 has the powers of **selection** of cases for audit and Respondent No.3 have the power to **conduct** the audit of the cases under the provisions of section 25 of the Sales Tax Act 1990.*
- c. *Declare that the impugned notices bearing No.DCIR/AU-04/Z-II/RTO-II/KHI/2013-14/67 dated 23.07.2014 issued under section 25 of the Sales Tax Act, 1990 for audit of the Petitioner's case for the tax period July 2012 to June 2013 and No.DCIR/AU-04/A&B/Z-II/KHI/2013-14/130 dated 21.08.2014 issued under section 11(2) of the Sales Tax Act 1990 are violative of instructions/order vide C.No.1(150)TPA-II(Ballot)-2012/157125-R dated 07.12.2012; hence liable to be quashed.*
- d. *Restrain the Respondent No.4 from proceeding in the matter for conducting audit under section 25 read with section 11(2) of the Sales Tax Act 1990 and passing any*

order in pursuance of the impugned notices, till the decision of this Petition;

- e. *Grant any other relief the Hon'ble Court deemed fit and proper in the circumstances of the case;*

2. On 27.08.2014, when the matter was fixed for hearing in Court following order was passed:-

“ Through instant petition, the petitioner has impugned the audit proceeding and the show cause notice issued under Section 11(2) of the Sales Tax Act, 1990, by the respondent on the ground that after insertion of Section 72B through Finance Act, 2010 only Board can select the case for audit. It has been contended by the learned counsel for the petitioner that under similar circumstances, several petitions relating to the Income Tax Cases are also pending before this Court.

Let notice be issued to the respondents as well as DAG for 09.09.2014. In the meanwhile, respondents shall not finalize the assessment of the petitioner till next date of hearing.”

3. Today, the learned counsel for the petitioner has candidly submitted that identical issue pertaining to authority of the Commissioner to conduct audit under Section 177 of Income Tax Ordinance, 2001 read with Section 214-C has already been decided by this Court through a common judgment dated 25.08.2014 in number of petitions including C.P.No.D-984/2015 in the case of Matiari Sugar Mills Ltd. v. Federation of Pakistan and others, wherein, the contention of the petitioners under similar circumstances has been disapproved and it has been held that Commissioner can select a case for audit under Section 177, irrespective of authority vested in F.B.R. under Section 214-C of the Income Tax Ordinance, 2001. Copy of such judgment has been placed on record for reference. According to learned counsel, the provisions under the Sales Tax Act, 1990, for conducting audit by Commissioner under Section 25 and selecting a case for audit by F.B.R. in terms of Section 72B of the Sales Tax Act, 1990 are similar in its nature and scope, therefore, instant petition may be disposed of in terms of the aforesaid judgment passed by the Divisional Bench of this Court.

4. We have heard the learned counsel for the petitioner, perused the record and the judgment of a Division Bench of this Court as referred

to hereinabove. Instant petition was filed on 27.08.2014, however, since then no comments whatsoever have been filed by the respondent Tax Authorities, whereas, learned counsel for the respondent is not in attendance. From perusal of the provision of Section 177 read with Section 25 read with Section 72B of Sales Tax Act, 1990, it appears that the same are similar in nature to the provisions of Section 177 of the Income Tax Ordinance, 1979, which authorize the Commissioner to conduct audit of accounts of a taxpayer, independent of the authority of F.B.R. to select cases for audit in terms of Section 214-C of the Income Tax Ordinance, 2001. There seems no impediment if instant petition may be disposed of while placing reliance on the aforesaid judgment as referred by the learned counsel for the petitioner. The Division Bench of this Court in the aforesaid judgment has decided that the Commissioner has the authority to select a case for audit, whereas, the powers as vested in the F.B.R. in terms of Section 214-C of Income Tax Ordinance, 2001 (here Section 72B of the Sales Tax, 1990), are independent and do not create any bar on the authority of the Commissioner to conduct audit of accounts of a taxpayer in terms of Section 177 of the Income Tax Ordinance, 2011. Moreover, the subject controversy has already been decided by Islamabad High Court in the case of Warid Telecom Pvt. Vs. Commissioner Inland Revenue and others (PTCL 2013 CL.331) Lahore High Court in the case of M/s. Premier Industrial Chemical Manufacturing Vs. Commissioner Inland Revenue etc. (PTCL 2013 CL.113), however, subject to fulfillments of the conditions as laid down under Section 177 of Income Tax Ordinance and Section 25 of the Sales Tax Act, 1990. Accordingly, instant petition stands disposed of along with listed application in terms of the judgment dated 25.08.2015 passed by this Court in C.P.No.D-984/2015 (Matiari Sugar Mills Ltd. Vs. Federation of Pakistan and others).

JUDGE

JUDGE