

IN THE HIGH COURT OF SINDH AT KARACHI

C.P. No. D-6169 of 2018

Present:

Mr. Justice Aqeel Ahmed Abbasi
Mr. Justice Agha Faisal

Petitioner: M/s. Sukkur Electric Power Co. Ltd.,
through Syed Mohsin Ali, advocate.

Respondents: Nemo for the respondents.

Date of Hearing: 30.08.2018.

Date of Order: 30.08.2018.

ORDER

Aqeel Ahmed Abbasi, J: After arguing the matter at some length, and in view of a query of this Court as to the maintainability of instant petition, which according to learned counsel for petitioner has been filed after withdrawal of Suit No.411 of 2018 pursuant to a recent judgment of Hon`ble Supreme Court of Pakistan on the point of maintainability of suit in tax matters in *Civil Appeal No.1171 of 2013 alongwith others in the case of M/s Searle IV Solution (Pvt) Ltd & Others v. Federation of Pakistan & Others*, whereby, Hon`ble Supreme Court has been pleased to hold that in tax matters a suit is maintainable before learned Single Judge of this court exercising its` original civil jurisdiction, however, subject to deposit of 50% of the tax calculated by Tax Authorities, learned counsel for the petitioner has submitted that petitioner is not in a position to deposit the 50% of the disputed amount, therefore, suit has been withdrawn. It has however been submitted that petitioner will not press instant petition provided respondents may be directed not to enforce the recovery of the impugned demand which is subject matter of Appeal before the Commissioner-IR (Appeals), Quetta in the instant case till its` final

decision, whereas, concerned Commissioner (Appeals) may be directed to decide the appeal of the petitioner at an early date.

2. As per record, before filing instant petition, the petitioner has chosen to avail the remedy by approaching learned Single Judge of this Court while filing a suit seeking stay against the recovery of impugned demand, which according to petitioner is subject matter of appeal before the Commissioner-IR (Appeals) in the instant case. However, it appears that in view of a recent judgment of the Hon`ble Supreme Court of Pakistan as referred to hereinabove on the point of maintainability of suit in tax matters, the petitioner was required to deposit 50% of the disputed amount before the tax authorities, but the petitioner, instead of complying with the directions of the Hon`ble Supreme Court, has chosen to withdraw the suit, and has filed instant petition seeking similar relief as sought in the suit, which, in our humble view, is an attempt to frustrate the order of Hon`ble Supreme Court requiring the petitioner to deposit 50% of the disputed amount of tax before Tax Authorities.

3. We may observe that in appropriate cases, extra ordinary constitutional jurisdiction of this court can be invoked provided, there is no other alternate efficacious remedy available to the aggrieved party, against any adverse decision, order, action or inaction on the part of the public functionaries which either suffers from some jurisdictional defect, or the same is patently illegal and passed in violation of principles of Natural justice. However, while invoking constitutional jurisdiction, an aggrieved party is required to approach the Court promptly, with clean hands, while making out a prima-facie case for grant of a discretionary relief under Article 199 of the Constitution of Pakistan.

4. Since, in the instant case, petition has been filed after decision of the Hon`ble Supreme Court requiring the petitioner to deposit 50% of the disputed amount before the Tax Authorities, which directions of the Hon`ble Supreme Court have not been complied with, on the contrary, suit has been withdrawn to frustrate the Court's order, therefore, we are not inclined to grant any discretionary relief to the petitioner in the instant case, and would therefore, dismiss instant petition in limine alongwith listed applications. However, before parting with the order, we may observe that the petitioner will be at liberty to approach concerned Commissioner-IR (Appeals) with the request of urgent hearing and decision in the appeal of the petitioner, which request of the petitioner shall be considered by the Commissioner-IR (Appeals) in accordance with law, whereas, it is expected that the appeal of the petitioner may be decided at an early date, preferably, within 04 weeks from the date of this order which shall be communicated by the petitioner to the concerned commissioner.

5. If the respondents intend to enforce recovery of the impugned demand, which is subject matter of the appeal before the Commissioner-IR [Appeals], recovery notice may be issued and the petitioner may be provided reasonable opportunity and time to explain its` position and thereafter, appropriate action may be taken in accordance with law.

J U D G E

J U D G E

Nadeem