

# IN THE HIGH COURT OF SINDH, KARACHI

*Constitutional Petition No. D –2187 of 2018*

PRESENT:

MR. JUSTICE AQEEL AHMED ABBASI.  
JUSTICE MRS. ASHRAF JAHAN.

*M/s. Zorlu Enerji Pakistan Limited.*

*Vs.*

*Sindh Revenue Board and others*

*Petitioner:* through M/s. Naveed A. Andrabi & Anwar Kashif Mumtaz,  
Advocate

*Respondents:* Nemo for the respondents.

*Date of Hearing:* 20.03.2018.

*Date of Judgment:* 20.03.2018.

## O R D E R

**Aqeel Ahmed Abbasi, J.** Through instant petition, the petitioner company has impugned the Show Cause Notices issued by the Assistant Commissioner, SRB (SWWP), under Sindh Workers Welfare Fund Act, 2014 and Sindh Workers Welfare Participation Fund Act, 2015, requiring the petitioner to provide certain details towards payment of WWF WWPF, whereas, petitioner has sought following relief(s):-

1. Declare that the notices issued by the Respondents are without jurisdiction and lawful authority and have no legal effect.
2. Declare that the demand of SWWF made on the Petitioner by Respondent No.2 to deposit 2% of its "Total Income" is illegal, void and without lawful authority.

3. Declare that power generation does not fall within the definition of Section 2(g) of SWWF Act, therefore, the Petitioner is not liable to pay SWWF.
4. Declare that the production of electricity does not fall within the definition of Article, therefore, the Petitioner is not liable to SWWF.
5. Grant any other appropriate relief this Honorable Court may deem fit and proper.
6. Award cost of this petition to the petitioner.

2. Learned counsel for the petitioner was confronted as to maintainability of instant petition on the ground that on mere issuance of Show Cause Notices under the aforesaid Act(s), which prima-facie do not suffer from any jurisdictional defect or illegality, how the Constitutional Petition is maintainable in view of recent judgments of this Court to this effect. In response to such objection, learned counsel for the petitioner has contended that the impugned Show Cause Notices have been issued to the petitioner while treating the petitioner as an industrial undertaking, whereas, according to learned counsel, the petitioner company, who is engaged in the business of power generation does not fall within the definition of industrial establishment as given in Section 2(g) of Sindh Workers Welfare Fund Act, 2014. Per learned counsel, in terms of Section 5(1) of the Sindh Workers Welfare Fund Act, 2014, only an industrial undertaken is required to pay 2% of the Total Income declared to the SWWF, whereas, petitioner company is not a industrial establishment. It has been further contended by the learned counsel that respondent have already treated the petitioner as an industrial establishment by issuing impugned Show Cause Notices, therefore, no useful purpose will be served if the petitioner may continue to seek remedy before the departmental forums. It has been prayed that this Court may declare that the petitioner, who is engaged in the business of power generation does not fall within the definition of industrial establishment under Section 2(g) of Sindh Workers

Welfare Act, 2014, and the impugned Show Cause Notices may be declared to be illegal without lawful authority.

3. We are not inclined to accept the aforesaid submissions of the learned counsel for the petitioner with regard to maintainability of instant petition for the reason that petitioner has not been able to point out any jurisdictional defect or illegality on the part of the respondent while issuing impugned Show Cause Notices, whereas, we are of the tentative view that the respondent is otherwise competent to issue any notice relating to levy of SWWF/SWWPF. Moreover, through impugned Show Cause Notices, petitioner has been provided an opportunity to explain its position with regard to subject levy and the petitioner can raise all such factual and legal objection before the forum as have been agitated through instant petition. Any interference by this Court in the proceedings initiated by the respondent under the Sindh Workers Welfare Act, 2014 and Sindh Workers Welfare Participation Fund Act, 2015, at this stage of Show Cause will amount to frustrate the legal proceedings and to pre-empt the decision by the relevant authority in respect of subject controversy, which otherwise is fully competent to decide the same in accordance with law. This Court in number of cases has already deprecated such practice and the tendency to challenge a Show Cause Notice in the Constitutional Petition under Article 199 of the Constitution. Reference in this regard can be made to judgment of this Court in the case of Messrs Maritime Agencies ((Pvt.)) Ltd v. Assistant Commissioner-II of SRB and 2 others (2015 PTD 160), wherein, it has been held as under:-

“6. The tendency to impugn the Show Cause Notices issued by the Public Functionaries under taxing statutes, before this Court under Article 199 of the Constitution, and to casually bye-pass the remedy as may be provided under a Special Statute is to be discouraged as it tends to render the statutory forums as nugatory. Moreover, if the proceedings initiated under Special Taxing Statutes do not suffer from jurisdictional error or

gross illegality the same are required to be responded and resolved before the authority and the forums, provided under the Statute for such purpose, whereas, any departure from such legal procedure will amount to frustrate the proceedings which may be initiated by the public functionaries under the law and will further preempt the decision on merits by the authorities and the forums which may be provided under the statute for such purpose. In the instant case a Show Cause Notice has been issued by the respondent who admittedly has the jurisdiction over the case of the petitioner, wherein, certain queries have been made and the petitioner has been provided an opportunity to respond to such Show Cause. Petitioner is at liberty to file detailed reply and to raise all such legal objection, as raised through instant petition, which shall be decided by the respondent strictly in accordance with law, after providing complete opportunity of being heard to the petitioner with particular reference to the provisions of Section 3 of Sindh Sales Tax on Services Act, 2011, read with Rule 32 of the Sindh Sales Tax on Services Rules, 2011 as argued by the learned counsel for the petitioner before us. If the petitioner is aggrieved by any adverse decision by the respondent in this regard, a remedy as provided under the law in terms of Section 57 of Sindh Sales Tax on Services Act, 2011 can be availed by filing an appeal before the Commissioner (Appeals) Sindh Revenue Board. Similarly an appeal is also provided against the order of CIT (Appeals) in terms of Section 61 before the Appellate Tribunal, whereas, after the order of Appellate Tribunal, a Reference can also be filed before this Court in terms of Section 63 of the Sindh Sales Tax on Services Act, 2011 in respect of questions of law which may arise from the order of the Tribunal. Since in the instant case, no final adjudication on the proposed Show Cause Notice has been made so far by the respondent and merely a Show Cause Notice has been issued, therefore, we are of the view that instant petition is pre-mature, whereas no cause of action has accrued to the petitioner which may justify the filing of instant petition.”

Further reliance in this regard can also be made to the case of Messrs Pakistan Mobile Communications Ltd. v. Sindh Revenue Board and 2 others (2014 PTD 2048), Roche Pakistan Ltd. v. Deputy Commissioner of Income-Tax and others (2001 PTD 3090) and Sitara Chemical Industries Ltd. v. Deputy Commissioner of Income Tax (2003 PTD 1285).

4. In view of hereinabove facts and circumstances of the case and while applying the ratio of aforesaid judgments of this Court to the facts of instant case, we are of the opinion that instant petition besides being misconceived and not maintainable is premature, which was dismissed in limine along with listed application(s) vide our short order passed in the morning and above are the reasons for such short order.

5. However, before parting with this order we may observe that the petitioner will be at liberty to raise all such legal objections, which have been raised through instant petition, before the respondents department (Sindh Revenue Board), who shall provide complete opportunity of being heard to the petitioner and shall pass appropriate order strictly in accordance with law.

*JUDGE*

*JUDGE*

Nadeem