

IN THE HIGH COURT OF SINDH AT KARACHI

Before: **Mohammad Junaid Ghaffar and Agha Faisal, JJ.**

CP D-1079 of 2020 : M/s. Junaid Jamshed Private Limited vs. Federation of Pakistan & Others.

For the Petitioners : Mr. Qazi Umair, Advocate

For the Respondents : Mr. Kafeel Ahmed Abbasi,
Deputy Attorney General.

Mr. Muhammad Taseer Khan,
Advocate for the department.

Date of hearing : 03.11.2020.

Date of announcement : 03.11.2020

JUDGMENT

Muhammad Junaid Ghaffar, J. This petition directly impugns a Show Cause Notices issued in terms of section 11 of the Customs Act, 1969, being not sustainable in law as no audit has been conducted; that until and unless an audit is conducted under Section 25 of the Sales Tax Act 1990 (“**Act**”) no Show Cause Notice can be issued under Section 11(2) of the Act; that the scheme of the Act is a self-assessment scheme and if a Show Cause Notice issued directly without audit is sustained, then the provisions of Section 25 *ibid* would be redundant; that the very issuance of a Show Cause Notice for alleged recovery of the amount itself requires a thorough probe which can only be done by a detailed audit and not merely on the basis of examination of a Sales Tax Return; that without a proper audit the Petitioners have been deprived of a beneficial provision contained in Section 25(5) of the Act whereby, the Petitioners / Tax Payers can deposit the amount voluntarily without penal consequences.

2. We have at the very outset confronted the learned Counsel for the petitioner that this issue now stands decided against the taxpayers through judgment dated 16.10.2020 in CP No.7255/2017 and other connected matters; however, learned Counsel has made an attempt to argue that in this petition an additional issue regarding failure of respondents in implementation of POS integrated system for TIER-1 retailers is also involved; however we are not impressed with such argument inasmuch as the order passed in CP No.7255/2017 and other connected matters also answers the very maintainability of the petition in the given facts wherein show cause notice has been impugned directly before this Court. Hence, the other issue and its adjudication by this Court is of no relevance. The relevant finding in the said order is as under;

5. The impugned Show Cause Notices in majority of the petitions have been issued in terms of Sub-Section (2) (barring a few) together with Sub-Section (3), and on perusal of the same, we do not see as to how an interpretation has been sought by the Petitioners that before an audit is conducted no Show Cause Notice can be issued. There is no such linkage or prerequisite, so to say, of an audit mandatorily before issuance of a Show Cause Notice in each and every case. It is settled law that nothing could be read into the statute and impliedly it cannot be read that an audit under Section 25 is mandatory before issuance of a Show Cause Notice. In our view both provisions are available to the officers of the Inland Revenue Department and if need arises, they can resort to a complete audit under Section 25 of the Act before issuance of a Show Cause Notice; however, at the same time they can also issue a Show Cause Notice without conducting audit on perusal of a Sales Tax Return. In fact, to us it appears that audit being an extensive exercise to be carried out on production of the entire record, resort to a direct show cause notice by the respondents is beneficial to the interest of the Petitioners, relieving them from a cumbersome exercise and apparently listed petitions have been filed without accrual of any cause of action to that extent. Show Cause Notice(s) has been issued and it is settled law that no order could be passed beyond the scope of the same, whereas, an audit may entail additional discrepancies; hence, on that account as well no grievance has accrued. Accordingly, we do not find any merits in the contention so raised on behalf of the Petitioners.

6. Moreover, we may also observe that tendency of impugning Show Cause Notices directly in constitutional jurisdiction is on an increase without any justifiable cause and instead of responding to the Show Cause Notice, constitutional jurisdiction of this Court is being invoked under Article 199 of the Constitution. We have also come across cases wherein, even after responding to the Show Cause Notices and joining of proceedings before the Department, petitions have been filed and the Show Cause Notices have been challenged. Neither a question of jurisdiction has been raised before us in these Petitions nor any assistance has been provided to us as to the Show Cause Notices have contravened any of provision of law and the Constitution. If it is not so, then we are afraid the Constitutional jurisdiction of this Court cannot be invoked.

7. The question that whether a Show Cause Notice could be challenged directly before a Court of law has been dealt with in a number of Judgments by the High Courts as well as the Hon'ble Supreme Court and it has been a consistent view that such tendency to impugn a Show Cause Notice issued under a taxing law and to casually bye-pass the remedy as provided under a Special Law is to be discouraged as it amounts to ruining the statutory norms as meaningless, more so, when the proceedings initiated by the Department does not suffer for want of jurisdiction and malafides. In addition, the very Special Law provides a complete mechanism of Appeals up to the level of Special Tribunals and then by way of a reference before the High Courts, and therefore, ultimately such question of law has to come before the High Court for its final adjudication. For these reasons, time and again the Courts have held that ordinarily a tax payer must respond to such Show Cause Notice and contest the matter before the Departmental hierarchy inasmuch firstly, the Department being a specialized forum has been conferred with such powers; and secondly, until a determination (adverse or otherwise) is made; mere issuance of such a notice by the department cannot be looked into on mere suspicion and apprehension of a tax-payer. 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 nugatory¹. In the matters of show cause, this court cannot assume a supervisory role in every situation to pass an interim order with the directions to the authority concerned to proceed but no final order should be passed till decision of the constitution petition or to suspend the operation of show-cause notice for an unlimited period of time or keep the matters pending for an indefinite period. By saying so, we do not mean that the show cause notice cannot be challenged in any situation but its challenge must be sparing and cautious². Ordinarily, the jurisdiction of the High Courts under Article 199 of the Constitution should not be invoked where alternative forum under a special law, duly empowered to decide the controversy is available and functioning. Where a special law provides legal remedy for the resolution of a dispute, the intention of the legislature in creating such remedy is that the disputes falling within the ambit of such forum be taken only before it for resolution. The very purpose of creating a special forum is that disputes should reach expeditious resolution headed by quasi judicial or judicial officers who with their specific knowledge, expertise and experience are well equipped to decide controversies relating to a particular subject in a shortest possible time³.

8. Therefore, in view of the law settled and being binding in nature, there is hardly any other ground in the given facts of the case which can justify maintainability of the petitions before this Court directly. Accordingly, we are of the considered opinion that no case for indulgence is made out to exercise our Constitutional jurisdiction in these matters and accordingly all listed petitions are dismissed with pending applications if any.

3. In view of hereinabove facts and the judgment as above this petitions is misconceived; hence, dismissed.

J U D G E

¹ Speaking through Aqeel Ahmed Abbasi, J, Maritime Agencies (Pvt.) Ltd. through Company Secretary, V. Assistant Commissioner-II of SRB and 2 others (2015 P T D 160)

² Speaking through Muhammad Ali Mazhar, J.Dr. Seema Irfan and 5 others V. Federation of Pakistan through Secretary and 2 others (2019 P T D 1678)

³ Speaking through Faisal Arab, J. Indus Trading and Contracting Company V. Collector of Customs (Preventive) Karachi and others (2016 S C M R 842)

JUDGE