

IN THE HIGH COURT OF SINDH AT KARACHI

Present: **Muhammad Junaid Ghaffar and Agha Faisal, JJ.**

CP D 2608 of 2020	:	Ansari Sugar Mills Limited vs. Federation of Pakistan & Others
CP D 2693 of 2020	:	Bawany Sugar Mills Limited vs. Federation of Pakistan & Others
CP D 3726 of 2020	:	Ansari Sugar Mills Limited vs. Federation of Pakistan & Others
CP D 3727 of 2020	:	Larr Sugar Mills Limited vs. Federation of Pakistan & Others
For the Petitioners	:	Mr. Taimoor Ahmad Qureshi Advocate
For the Respondents	:	Mr. Ameer Bukhsh Metlo Advocate, For respondents No.3 & 4 (CP 2608, 3726 & 3727 of 2020) Mr. Mohsin Shehwani, Advocate on behalf of Mr. Imran Ahmed Mithani, Advocate, for respondents No.3 & 4 (CP 2693 of 2020) Rana Sakhawat Ali, Advocate Holding brief for Mr. Muhammad Ahmer Assistant Attorney General
Date of hearing	:	23.12.2020
Date of announcement	:	23.12.2020

JUDGMENT

Agha Faisal, J. The crux of the present determination is whether the petitioners have an actionable vested right to seek their grievance addressed vide alternate dispute resolution (“ADR”), pursuant to section 47-A of the Sales Tax Act 1990 (“Act”), notwithstanding pending proceedings before the learned Appellate Tribunal Inland Revenue (“ATIR”) initiated by the petitioners themselves. The subject petitions were argued conjunctively on the common issue and were dismissed vide a common order, dated 23.12.2020. These are the reasons for our aforementioned order.

2. Briefly stated, the petitioners were served with show-cause notices, in respect whereof orders in original were also rendered requiring the petitioners to pay allegedly evaded sales tax and penalty. The orders in original were

assailed before the Commissioner Appeals, and the said appeals were dismissed. The dismissal of appeals was challenged before the ATIR and in such proceedings stay applications were also preferred. The applications were dismissed by the ATIR and post institution of proceedings before this Court, the stay applications were heard afresh and dismissed again.

While the appellate proceedings remain pending before the ATIR, the petitioners preferred applications for resort to ADR. The said applications, though initially entertained, were dismissed upon the premise that criminal proceedings are pending against the petitioners. The present petitions insist that the matter/s be referred to ADR and that recovery proceedings may also be suspended in the interim period.

3. The petitioners' counsel pleaded entitlement to ADR, as of right, and relied upon *Attock Petroleum*¹ to bulwark his submissions. The respondents' counsel argued to the contrary and submitted that the authority relied upon did not entitle the petitioners to abjure the dispute resolution hierarchy, invoked of their own volition, in an effort to delay / defeat the due process of law.

4. We have appreciated the arguments of the respective learned counsel and considered the law to which our surveillance was solicited. The question before us is whether the petitioners have an actionable vested right to seek their grievance addressed vide ADR.

5. It is considered appropriate to discuss the implication of *Attock Petroleum* at the very onset. The honorable Supreme Court observed that the relevant scheme of ADR was envisaged to settle fiscal disputes without the intervention of court; however, the same was not amenable for adjudication of criminal liability. The reference to criminal liability was in relation to that arising pursuant the relevant fiscal statutes; however, the said pronouncement did not confer any right upon a party to unilaterally insist upon the adjudication of a *lis* via ADR. Therefore, reliance of the petitioners upon the said authority does not augment their position in the question before us.

6. Section 47-A² of the Act envisages recourse to ADR, subject to the terms and conditions delineated therein. The statutory provision is qualified

¹ Per *Iftikhar Muhammad Chaudhry CJ. (as he then was) in Federation of Pakistan & Others vs. Attock Petroleum Limited* reported as 2007 PTD 1495.

² 47A. Alternative dispute resolution.— (1) Notwithstanding any other provision of this Act, or the rules made thereunder, an aggrieved person in connection with any dispute pertaining to (a) the liability of tax against the aggrieved person, or admissibility of refunds, as the case may be; (b) the extent of waiver of default surcharge and penalty; or (c) any other specific relief required to resolve the dispute, may apply to the Board for the appointment of a committee for the resolution of any hardship or dispute mentioned in detail in the application, which is under litigation

and does not confer an inalienable right upon a party to pick and choose fora. On the contrary the provision provides for dissolution of the constituted committee, leaving the matter to be decided by the court / appellate authority, *inter alia* if the matter is not resolved within a stipulated time.

7. In the present facts and circumstances³ a show cause notice was issued on 18-12-2018, culminating in an order in original dated 23.01.2019. The appeal there against was dismissed vide order dated 03.05.2019, where after the same was assailed before the ATIR on 17.05.2019 (the proceedings in respect whereof remain pending). Successive stay applications were dismissed by the ATIR on 26.06.2019 and 16.10.2019⁴ and thereafter the request for ADR was preferred on 06.12.2019. Per respondents' counsel, further proceedings in respect of recovery remain stayed pursuant to ad interim orders obtained in the present petitions.

8. Learned counsel for the petitioners has been unable to demonstrate any vested right before us to insist upon adjudication via ADR, moreover, when recourse thereto was only sought upon conclusion of the proceedings particularized supra. No case was made out before us to restrain proceedings before the ATIR, initiated by the petitioners themselves. It is thus our considered view that the petitioners have been unable to advance any cogent grounds to abjure the statutory dispute resolution mechanism; however, they shall remain at liberty to seek appropriate redress if aggrieved by the findings of the ATIR.

in any court of law or an Appellate Authority, except where criminal proceedings have been initiated or where interpretation of question of law having effect on identical cases is involved having effect on other cases. (2) The Board may, after examination of the application of an aggrieved person, appoint a committee, within sixty days of receipt of such application in the Board, comprising, — (a) Chief Commissioner Inland Revenue having jurisdiction over the case; and (b) two persons from a panel notified by the Board comprising of chartered accountants, cost and management accountants, advocates, having minimum of ten years' experience in the field of taxation and reputable businessmen. (3) The Board shall communicate the order of appointment of committee to the court of law or the appellate authority where the dispute is pending and the Commissioner. (4) The Committee appointed under sub-section (2) shall examine the issue and may, if it deemed necessary, conduct inquiry, seek expert opinion, direct any officer of the Inland Revenue or any other person to conduct an audit and shall decide the dispute through consensus, within one hundred and twenty days of its appointment. (5) The Committee may, in case of hardship, stay recovery of tax payable in respect of dispute pending before it for a period not exceeding one hundred and twenty days in aggregate or till the decision of the Committee or its dissolution, whichever is earlier. (6) The decision of the committee under sub-section (4) shall be binding on the Commissioner when the aggrieved person, being satisfied with the decision, has withdrawn the appeal pending before any appellate authority or the court of law and has communicated the order of withdrawal to the Commissioner: Provided that if the order of withdrawal is not communicated to the Commissioner within sixty days of the service of decision of the committee upon the aggrieved person, the decision of the committee shall not be binding on the Commissioner. (7) If the Committee fails to decide within the period of one hundred and twenty days under sub-section (4), the Board shall dissolve the committee by an order in writing and the matter shall be decided by the court of law or the appellate authority where the dispute is pending. (8) The Board shall communicate the order of dissolution to the court of law or the Appellate Authority and the Commissioner. (9) The aggrieved person, on receipt of the order of dissolution, shall communicate it to the court of law or the appellate authority, where the dispute is pending. (10) The aggrieved person may make the payment of sales tax and other taxes as decided by the committee under sub-section (4) and all decisions and orders made or passed shall stand modified to that extent. (11) The Board may prescribe the amount to be paid as remuneration for the services of the members of the Committee, other than the member appointed under clause (i) of sub-section (2). (12) The Board may, by notification in the official Gazette, make rules for carrying out the purposes of this section.

³ Reference being to the facts of the lead petition, being representative of the remaining petitions.

⁴ Post orders of this Court dated 24.09.2019 in CP D 4545 of 2019.

9. In view of the reasoning herein contained, we find the listed petitions to be devoid of merit, hence, the same, along with pending application/s, were dismissed vide our short order dated 23.12.2020. These are the reasons for the aforementioned short order.

JUDGE

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