

**ORDER SHEET**  
**IN THE HIGH COURT OF SINDH KARACHI**

**Suit No. 370 of 2017**

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<b>DATE</b>	<b>ORDER WITH SIGNATURE OF JUDGE</b>
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For hearing of CMA No. 2101 of 2017.

**16-11-2020**

Mr. Ovais Ali Shah, Advocate for the Plaintiff.

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The Plaintiff has challenged show-cause notice dated 18.01.2017 issued under Section 11 (2) of the Sales Tax Act, 1990 asserting that the Plaintiff is liable to pay differential of further tax for supplying taxable goods to unregistered persons. By an interim order dated 08.02.2017, the department was restrained from taking coercive action against the Plaintiff on the basis of the impugned show-cause notice. On 27-06-2018, in the case of *Searle IV Solution (Pot.) Ltd. v. Federation of Pakistan* (2018 SCMR 1444), the Hon'ble Supreme Court of Pakistan directed that:

“17. Keeping in view the alarming allegations made above, it is directed, that while the Single Bench of the Sindh High Court at Karachi may still take cognizance of any suit arising out of an action/order of the tax authorities/Customs Officers, such jurisdiction must be sparingly exercised by the Single Bench and the suits must be expeditiously decided within the period of one year or less so that these suits are not used by aggrieved parties as a means to deprive the Public Exchequer of the taxes due for years on the basis of interim injunctions. Furthermore, as a guiding principle, to bring some certainty and uniformity in the treatment of such suits, the suits filed and those that have already been filed must only be entertained on the condition that a minimum of 50% of the tax calculated by the tax authorities is deposited with the authorities as a goodwill gesture, so that on conclusion of the suit, according to the correct determination of the tax due or exempt (as the case may be), the same may be refunded or the remaining balance be paid.

18. For the foregoing reasons, while allowing these appeals, it is held and directed as under:-

- (1) .....
- (2) .....
- (3) .....
- (4) .....
- (5) .....
- (6) .....

(7) the suits, which are already pending or shall be filed in future, must only be continued/entertained on the condition that a minimum of 50% of the tax calculated by the tax authorities is deposited with the authorities.”

When confronted with the above condition of deposit imposed by the Hon'ble Supreme Court of Pakistan in *Searle IV Solution*, learned counsel for the Plaintiff submits that the said condition is not attracted to the instant suit, inasmuch as the issue involved has already been decided by a Division Bench of this Court in the case of DIGICOM Trading (Pvt.) Ltd versus Federation of Pakistan [2016 PTD 468], and this much is noted in the order dated 20.11.2019 passed in this suit.

I have gone through the order dated 20.11.2019. That order simply recorded the contention of learned counsel and observed that the matter with regards to the deposit of 50% would be considered on the next date of hearing. As regards the reliance placed by learned counsel on the case of *DIGICOM* [2016 PTD 468], that is essentially to argue that the impugned show-cause notice misinterprets provisions of the Sales Tax Act, 1990 and hence without jurisdiction. While that may be an argument to circumvent the special *fora* provided under the Sales Tax Act, 1990 and to maintain a suit, which aspect has yet to be examined, I do not see how that avoids the condition of deposit required of *Searle IV Solution*, which, in my view, is a condition to seeking injunctive relief against tax proceedings by invoking the jurisdiction of the High Court of Sindh at Karachi by way of a suit. While there may be suits to which said condition may not attract, this is not one of those suits especially when the impugned show-cause notices set-out the amount of tax allegedly evaded. Therefore, the Plaintiff is given ten (10) working days starting tomorrow to deposit 50% of the amount mentioned in the impugned show-cause notice with the department, failing which, in the very least, the prayer for injunction along with the listed application will be dismissed. To be fixed after two weeks. Interim order to continue till then.

**JUDGE**