

IN THE HIGH COURT OF SINDH AT KARACHI

Present:
Muhammad Junaid Ghaffar, J.
Agha Faisal, J.

CP D 3964 of 2019 : Maq International vs. Federation of
Pakistan & Others

CP D 4180 of 2019 : SPGPRINTS Pakistan (Pvt.) Ltd. vs.
Federation of Pakistan & Others

For the Petitioners : Qazi Umair Ali
Advocate

For the Respondent : Ms. Dil Khurram Shaheen,
Advocate
(CP D 3964 of 2019)

Mr. Naveed-ul-Haq Chaudhry,
Advocate
(CP D 4180 of 2019)

Mr. Kafeel Ahmed Abbasi
Deputy Attorney General

Date of hearing : 03.03.2021

Date of announcement : 03.03.2021

JUDGMENT

Agha Faisal, J. The petitioners have impugned the notices for audit, issued prior to 30.06.2019, (“Impugned Notices”) in respect of periods between 2016 and 2017, on the basis of section 7A(2) of the Sales Tax Act, 1990 (“Act”), which precluded tax payers from being subjected to audit or scrutiny of record, if qualifying requirements thereof were met. It is considered illustrative to reproduce the relevant provision (“Provision”) herein below:

“2 Notwithstanding anything contained in this Act or the rules made thereunder, the Federal Government may, by notification in the official Gazette, and subject to the conditions, limitations, restrictions and procedure mentioned therein, specify the minimum value addition required to be declared by certain persons or categories of persons, for supply of goods of such description, or class as may be prescribed, and to waive the requirement of audit or scrutiny of records if such minimum value addition is declared.”

2. Per petitioners’ counsel, the Impugned Notices were unlawful since the Provision required that if the petitioners qualified thereunder, the benefit of the Provision would be available thereto. It was demonstrated that even though the Provision was removed from the purview of the Act, vide Finance Act 2019, however, it was squarely applicable to the present facts and

circumstances as the date of issuance of Impugned Notices and the relevant period was demonstrably prior to coming into effect of Finance Act 2019. It was further submitted that there is no cavil to the petitioners' compliance with the qualifications per the Provision, in order to avail the benefit thereof.

3. Learned DAG submitted that the Provision was in the field at the relevant time and that record was devoid of any rationale to deny petitioners the benefit of the waiver from audit and scrutiny so claimed.

Learned counsel for the respondent took a different position and initially sought to expound upon the generic scope of audit and eventually restricted his position to reliance upon Rule 58E(2) of the Special Sales Tax Rules, 2007 ("Rules"), despite the admitted fact that the same stood repealed in 2012.

4. We have heard the respective learned counsel and appreciated the law to which our surveillance was solicited. The only point requiring determination before us is whether any case has been made out to disentitle the petitioners to the benefit granted thereto by the Provision.

5. The law, as stood at the pertinent time, duly provided for waiver from audit or scrutiny, if a taxpayer qualified per the Provision. It is admitted position before us that the petitioners did in fact satisfy the requirements of the Provision. The reliance of the respondents counsel upon rule 58E(2) of the Rules is unmerited and even otherwise it is admitted position that the said rule stood repealed in 2012. Therefore, no case is made out to deny the petitioners the *quid pro quo* benefit granted thereto by the Provision.

6. This issue also appears to have been decided by the honorable Lahore High Court in the *Zahid Saleem case*¹, wherein the Provision, stipulating that the Federal Government may specify the minimum value addition required to be declared by certain categories of people for supply of goods of certain description to waiver of the requirement of audit or scrutiny of record, was considered. In the said matter as well, *pari materia* to the present facts and circumstances, there was no cavil to the petitioners having qualified at the anvil of the Provision. It was observed that if a qualifying tax payer was not given the benefit of the waiver envisaged in the Provision then the entire purpose of the Provision would be lost.

7. In this context it is our considered view that no case has been set forth before us to justify the issuance of the notices impugned before us; therefore, in the present facts and circumstances, the Impugned Notices appear to be

¹ Per *Shahid Karim J* in judgment dated 27.12.2017 *Zahid Saleem vs. Federation of Pakistan & Another (WP 30492 of 2014)*.

unwarranted and manifestly unjust / prejudicial towards the petitioners, hence, cannot be sustained and are hereby set aside.

JUDGE

JUDGE

Khuhro/PA