

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI

C.P.No. D-3378 of 2018

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| <i>Date</i> | <i>Order with signature of Judge</i> |
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Priority

1.For hearing of Misc No.15291/2018.

2.For Hearing of main case.

04.03.2021:

Mr. Ali Almani, Advocate for the petitioner.

Mr. Muhammad Ahmar, Assistant Attorney General.

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None present for the department / respondent; though served and comments filed, whereas learned Assistant Attorney General representing the Federation of Pakistan pleads no instructions.

2. Through this petition, the petitioner has impugned suspension of its Sales Tax Registration (brought to its knowledge via newspapers) without issuance of show cause notice and by way of order dated 27.04.2018 the said order of suspension dated 26.4.2018, which was yet to be delivered to the petitioner was suspended in presence of Mr. Abdul Hafeez, Additional Commissioner Inland Revenue Zone-V, who had come to the Court and waived the notice. The said suspension was made purportedly pursuant to a show cause notice dated 23.4.2018 issued in terms of section 11(2) of the Act for recovery of sales tax and subsequently the said show cause notice dated 23.4.2018 was adjudicated against the petitioner and in Appeal the Commissioner (Appeals) has been pleased to set aside it and the matter was remanded vide order dated 04.10.2019.

3. Today learned Counsel for the petitioner submits that he would be satisfied if the order of suspension is set-aside as apparently the same was issued without a show cause notice purportedly in terms of Rule 12 of the Sales Tax Rules 2001, which now stands declared as ultra vires by this Court. As noted no one has come forward to assist the Court, therefore, we are of the view that no useful purpose would be

served by keeping this petition pending anymore. Admittedly, the suspension itself was without issuance of any show cause notice, whereas, the Rule purportedly on the basis of which the power of suspension was exercised without issuance of show cause notice, already stands declared ultra-vires by a Division Bench judgment of this Court dated 12.9.2019¹ in the case titled as *Saleem Ahmed V/S Federation of Pakistan & others* {C.P.No. D-8101 of 2017 & others}.

4. Accordingly, in the facts and circumstances of this case, the order of suspension dated 26.04.2018 is hereby set aside. Consequently, the petition is allowed in the above terms.

J U D G E

Aamir, PS

J U D G E

¹ 7. It is for these reasons we, through our Order dated 12.09.2019 allowed these petitions in the following terms:-

- i. Rule 12(a)(i) of the Sales Tax Rules, 2006, to the extent it gives authority to the Commissioner to suspend the sales tax registration of a registered person "without prior notice", is hereby declared to be *ultra vires* to the Constitution, violative of principles of natural justice and in excess of authority vested under Section 21(2) of the Sales Tax Act, 1990;
- ii. All the orders of suspension of Sales Tax Registration issued to the petitioners in violation of express provisions of Section 21(2), which requires the satisfaction of the Commissioner and only to be made where a registered person is found to have issued fake invoice, or has otherwise committed tax fraud, without confronting the registered person with such reasons in writing, is declared to be without lawful authority and of no legal effect; and
- iii. All the order(s) of suspension of Sales Tax Registration, wherein, Show Cause Notice(s) under Section 21(2) has not been issued within seven days therefrom, and/or no order of blacklisting has been passed within ninety days of issuance of the notice of hearing, the suspension of Sales Tax Registration becomes *void-ab-initio*, accordingly their Sales Tax Registration stands restored.