

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

Suit No. 973 of 2019

DATE

ORDER WITH SIGNATURE OF JUDGE

1. For orders on CMA No. 8331/19. (if granted)
2. For orders on CMA No. 8332/19. (U/O 39 Rule 1 & 2 CPC)

29.05.2019.

Mr. Hyder Ali Khan Advocate for Plaintiff.

1. Granted.
2. This is a Suit for declaration, permanent and mandatory injunction. Learned Counsel for the Plaintiff submits that pursuant to a Show Cause Notice, an Order-in-Original bearing No.08/2019 was passed by the Defendants / Department on 26.2.2019, in terms whereof an amount of Rs.5,004,340/- was adjudged against the Plaintiff which was paid and no further appeal was preferred. He submits that subsequently, Defendant No.2 has passed an ex-parte order dated 10.5.2019 impugned herein, purportedly exercising certain powers under s.45A of the Sales Tax Act, 1990, whereby he has set-aside the Order in Original for denovo consideration. He submits that thereafter, fresh proceedings have been initiated against the Plaintiff in terms of two notices dated 15.5.2019 and 23.5.2019. Per learned Counsel the entire exercise initiated by Defendant No.2 is without any lawful authority and jurisdiction as the said Defendant has set-aside the Order in Original suo-motu without issuing any notice to the Plaintiff. According to him this is in violation of s.45A itself, as well as settled law that no one is to be condemned unheard. According to him since an Order was in field and acted upon by the Plaintiff by depositing the adjudged amount, certain vested rights had accrued in favor of the Plaintiff; hence, the said order could not have been set-aside

unilaterally without even issuing any notice to the Plaintiff and affording an opportunity to controvert the stance of Defendant No.2. He has placed reliance on a decision of a learned Division Bench of the Lahore High Court reported as ***Commissioner Inland Revenue v Magna Textile Industries Private Limited*** (2019 PTD 594) and the case of ***Paramount International Limited v Pakistan and others*** (2014 PTD 1256).

Let notice be issued to the Defendants for **18.6.2019**. Till the next date of hearing, the proceedings initiated pursuant to order dated 10.5.2019 passed under s.45A shall remain suspended.

J U D G E

Ayaz P.S.