

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

Suit No.1052 of 2018

DATE	ORDER WITH SIGNATURE OF JUDGE
------	-------------------------------

1. For orders on CMA No.7867/2018 (if granted)
 2. For orders on CMA No.7868/2018 (U/O 39 Rule 1 & 2 CPC)
-

15.05.2018

Mr. Khalid Jawed Khan, Advocate for Plaintiff.

1. Granted.
2. This is a Suit for Declaration and Permanent Injunction, whereby, the Plaintiff has impugned Show Cause Notice dated 07.02.2018 (**Page-73**), Show Cause Notice dated 03.05.2018 (**Page-75**) and a Notice for production of documents dated 07.05.2018 (**Page-79**) issued by the Defendants. Learned Counsel for the Plaintiff submits that the Plaintiff is engaged in the business of import, supply and re-export of branded watches. He submits that prior to these notices, on 05.10.2015, a Show Cause Notice was issued under Section 11(2) of the Sale Tax Act, 1990 and thereafter Order-in-Original No.02/2016 was passed on 30.06.2016, whereby, the charges and contravention raised against the Plaintiff were decided in favor. He submits that such order was not appealed and has attained finality, as to the merits of the defendants case; however, the Directorate Intelligence and Investigation Inland Revenue again initiated further proceedings in respect the same controversy and such exercise was carried out by them for the tax period starting from April 2013 to April, 2017 and after a thorough investigation, a Report dated 19.03.2018 was issued, whereby, once again the matter was decided in favor of the Plaintiff. He submits that now for the same period an Officer of Inland Revenue has issued a Show Cause Notice under Section 11 (ibid) dated 03.05.2018 and so also a Notice and Order under Section 21(2) of the Sales Tax Act, 1990, whereby, the registration of the Plaintiff has been suspended. He further submits that another Notice dated 07.05.2018 has been issued for production of documents for audit purposes. Per

learned Counsel insofar as these three impugned Notices / orders are concerned, firstly, one Order in Original is already in favor, secondly, they pertain to the same period for which already an investigation has carried out by the Intelligence Directorate culminating in favour of the Plaintiff, whereas, the notice for production of documents and intended audit has been issued in violation of the FBR's Tax Audit Policy 2017, whereby, the audit in such matters is excluded. He also submits that the Sales Tax Registration has been suspended without application of mind and for extraneous reasons, which are not provided under Section 21(2) of Sales Tax Act, 1990. Whereas, reliance has been placed on the cases reported as **2016 PTD 1675** (*Oil & Gas Development Co. Ltd v. Federal Board of Revenue through Chairman & 2 others*, **PTCL 2018 CL 199** (*Punjab Beverages Co. V. FBR*) and **2018 PTD 621** to contend that Rule 12 of the Sales Tax Rules, 2006, has been declared ultra vires to section 21 of the Sales Tax Act, 1990. He has also relied upon the case reported as (*Messrs Inbox Business Technologies Ltd. Through Chief Investment Officer v. Pakistan through Secretary Revenue Division and 2 others*) passed by a learned Single Judge of this Court, whereby, suspension of Sales Tax Registration in like matters under Section 12 ibid has been set aside.

Let notice be issued to the Defendants and DAG for **31.05.2018**. Till the next date of hearing, the impugned Notices dated 07.02.2018, 03.05.2018 and 07.05.2018 available at pages 73, 75 & 79 shall remain suspended.

J U D G E

Ayaz