

HIGH COURT OF SINDH AT KARACHI

C.P. No.D-6945 of 2019

Present:

Mr. Justice Irfan Saadat Khan.

Mr. Justice Zulfiqar Ahmad Khan.

Date of hearing: 03.03.2022.

Petitioner: M/s. Burma Oil Mills Limited through Mr. Arshad Hussain, Advocate along with Mr. Naeem Suleman, Advocate.

Res: Province of Sindh and 2 others through Mr. Saifullah, Additional Advocate General Sindh along with Mr. Zulfiqar Ali Law Officer.

ORDER

Zulfiqar Ahmad Khan, J:- This petition has been filed impugning the notice issued to the petitioner, copy whereof is attached with the petition as Annexure 'B', by which the respondent No.2 is seeking information under Section 52 of the Sindh Sales Tax on Services Act, 2011. Learned counsel has placed a copy of judgment passed by a Divisional Bench of this Court (of which one of us, namely, Zulfiqar Ahmad Khan J. was a member) in C.P. No.568 of 2014 and others, wherein notice under Section 52 of the Sindh Sales Tax on Services Act, 2011 issued to the petitioners by the recipient in the absence of any audit, inquiry, investigation or assessment proceedings pending against them were declared to be illegal and without lawful authority. According to the learned counsel, since in this case also, no such inquiry, investigation or audit has been posed, the notice impugned in the instant case is also without jurisdiction and therefore the issue involved in the present petition is squarely covered by the judgment supra and be dealt as such.

Learned counsel for the respondent, on the other hand, stated that it is evident from the said notice that the same has been issued only for seeking information under Section 26 (5) of the Act, 2011. He also stated that as per the last paragraph of the impugned notice, the petitioner has been directed to submit only copies of duly certified annual audited financial statements along with auditor's certificate for the financial years

2012-13, 2013-14, 2014-15 & 2015-16 which are required to be retained and produced by the petitioner under Section 26 and 27 and hence, according to him, this matter is not covered by the judgment supra.

We have heard the learned counsel at some length and have perused the record.

It is noted that through the impugned notice copies of duly certified annual statement along with audit certificate for the years 2012-13, 2013-14, 2014-15 & 2015-16 has been sought from the petitioner. As per the learned counsel for the petitioner compliance as required under Section 26(5) of the Act 2011 has already been made by providing such information and documents in the past and if the compliance was not made, the respondent was competent to commence penal procedure under the relevant provision of the law. We are of the view that the subject notice issued under section 52 requiring the petitioner to submit copies of duly certified annual audited financial statements, along with auditor's certificate for the years mentioned therein is not properly issued in the presence of Section 27(1) of the Act 2011 that require retention of records and documents for a period of 10 years and therefore calling such information from the petitioner is only competent under subsection 2 of the said section.

Under such circumstances, this petition is disposed of along with the listed application by setting aside the impugned notice, however by directing the respondents that in case the documents i.e. financial statement and details of annual audited accounts required from the petitioner through the impugned notice have not been furnished by the petitioner in the past, the procedure provided under the law be followed as that may include issuance of a fresh notice under Section 27(2) of the Act-2011.

JUDGE

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