

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
CP No.D-6701 of 2018

DATE	ORDER WITH SIGNATURE OF JUDGE(S)
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Priority

1. For hearing of CMA No.29294 of 2020
2. For hearing of main case

22.11.2021

Ms. Fauzia Rasheed, Advocate for the petitioner
Dr. Shah Nawaz, Advocate for the respondents
Mr. Kafil Ahmed Abbasi, DAG a/w Mr. Hussain Bohra, Asstt. Attorney
General

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Heard counsel.

It is the case of the petitioner that originally by a show cause notice dated 18.01.2018 for tax period from July 2015 to April, 2016, the petitioner was asked to appear for hearing of the subject matter.

The show cause notice was replied and there was complete silence. All of a sudden on 23.05.2018 another show cause notice of the same tax period with the same reasoning was issued to the petitioner which was again replied and again there was complete silence until a recovery notice under Section 48 of Sales Tax Act, 1990 was issued on 17.9.2018. This was challenged by the petitioner that without an exercise of hearing in relation to earlier notice or even for the second one, recovery notice could not have been issued without passing an Order-in-Original and that could have been done only after hearing the petitioner.

Comments have been filed by the respondent alongwith two documents i.e. [1]. Letter dated 8.10.2018 for vacating the subsequent show cause dated 23.5.2018 without disclosing the reason thereof and [2]. Order-in-Original dated 17.4.2018 purportedly passed in pursuance of first show cause notice dated 18.01.20218. There is no justification disclosed by the respondent as to when the hearing took place and how this Order-in-Original was served. There is no entry of inward diary date of service and there is no satisfactory reply that this Order-in-Original was served on the petitioner. This Order-in-Original has become seriously doubtful in a sense that there was a second show cause notice dated 23.5.2018 as disclosed which was belatedly withdrawn. In the entire judgment nothing was said about merit of the case and the commissioner went on to decide the controversy in view of the fact that the petitioner did not appear. Absence of

petitioner does not prevent the commissioner to apply mind and discuss merit of the case and the petitioner should not be penalized on account of his absence. There is no satisfactory explanation as to how the Order-in-Original was served. We then were left with two options; [a]. allow the petitioner to file an appeal after relaxing limitation and [b]. denovo hearing on the basis of 1st show cause notice.

We have perused the Order-in-Original and are of the view that no discussion of merit has taken place and the order is devoid of reasoning as required under Section 24-A of the General Clauses Act, 1897.

In view of above facts when no hearing took place we, therefore, deem it appropriate that the petitioner was seriously condemned unheard. The petition is disposed of with observation that Order-in-Original No.01 of 2018 be set aside with direction to the respondent to initiate denovo proceedings from the fresh date of hearing and pass a proper Order-in-Original, after affording full opportunity of being heard to the petitioner.

CP No.D-6701 of 2018 stands allowed in the above terms alongwith pending application[s].

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