

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
C. P. NO. D-743 / 2015

Date	Order with signature of Judge
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- 1) For orders as to non-prospection of CMA No. 13577/2015.
Notice not issued cost not paid nor copy supplied.
- 2) For katcha peshi.
- 3) For hearing of Misc. No. 6082/2015.

9.6.2015.

Mr. Amjad Javed Hashmi Advocate for petitioner.
Mr. Mukesh Kumar AAG.

1, 2 & 3) Counsel for petitioner submits that through CMA No. 13577/2015 the petitioner seeks amendment in the Memo of Petition in terms of Order VI Rule 17 CPC, with regard to insertion of certain tariff Headings i.e. 9824.0000 and 9814.2000, and so also for arraying Accountant General Sindh as respondent.

Conversely, learned AAG submits that instant petition does not merit any consideration and is not maintainable for the reason that an Order-in-Original was initially passed against the petitioner on 17.12.2014 against which the petitioner has already preferred an appeal before the Commissioner (Appeals) Sindh Revenue Board, which is pending, and in such appeal the petitioner had not filed any stay application, whereas, after having obtained interim orders, by misrepresentation, instant petition has been tagged with C.P. No. 3723/2013 and others, despite having materially different facts. In this regard learned AAG has referred to the interim order passed on 11.2.2015 and order dated 18.3.2015.

From perusal of the record it appears that the contention of the learned AAG appears to be correct, as instant petition has been filed against an Order in Original passed on 17.12.2014, which has already been impugned by filing an appeal before the Commissioner (Appeals) SRB. On 11.2.2105 when instant petition was taken up for Katcha peshi following order was passed:-

- “1. Granted.
2. Granted subject to all just exceptions.
3. Learned Counsel for the petitioner, inter alia, contended that pursuant to order in original passed by SRB, an appeal has already been filed before the Commissioner (Appeals), Sindh Revenue Board along with stay application, which is still pending. However, the respondents have issued a notice of recovery under Section 66 of the Sindh Sales Tax on Service Act, 2011 in respective the demand which has been impugned by

the petitioner. Per learned Counsel, the tax-payer is entitled to redressal of his grievance against adverse orders at least before one independent forum where the recovery of the impugned demand by coercive means, under the circumstances, is based on malice. Let notice be issued to the respondents as well as AG for 26.2.2015. In the meanwhile, the respondents are directed not to adopt any coercive measures for the recovery of the impugned demand, which is subject matter of the appeal, till the next date of hearing.

To come up on 26.2.2015.”

Perusal of the aforesaid order reflects that while obtaining interim orders, the only grievance of the petitioner was in respect of recovery proceedings initiated by the respondents, pursuant to passing of Order in Original, whereas, on perusal of memo of Petition in C.P. No. D-3723/2013, it appears that the facts of instant petition are materially different from the facts of CP No. 3723/2013, as in the instant petition an Order in Original (correctly or otherwise) has already been passed against the petitioner, whereas the petitioner has also filed an appeal against such Order in Original. In such circumstances, we are of the view that instant petition, being misconceived is not maintainable, as the petitioner cannot be allowed to avail the departmental remedy as provided under the law and at the same time also seek redressal of its grievance, by filing Constitution Petition before this Court. In this regard reference may be made to the judgment of the Hon’ble Supreme Court in the case of *Commissioner of Income Tax Vs. Hamdard Dawakhana (Waqf) Karachi* reported in **PLD 1992 SC 847**, wherein the Hon’ble Supreme Court has held that *once a party opts to invoke the remedies provided for under the relevant statute, he cannot at his sweet will switch over to Constitutional jurisdiction of the High Court in the mid of the proceeding in the absence of any compelling and justifiable reason.*” In our view there do not appear to be any justifiable circumstances in the instant matter which may compel us to exercise the jurisdiction under Article 199 of the Constitution of Pakistan.

In view of hereinabove facts and circumstances of instant case, instant petition is dismissed as not being maintainable. However, we would direct the Commissioner (Appeals) SRB to decide the pending appeal filed on behalf of the petitioner preferably within a period of 10 days from today, whereas, the respondents shall not enforce recovery of the impugned demand for such period of 10 days. Petition stands dismissed, however, with above observations.

JUDGE

JUDGE