

**ORDER SHEET**  
**IN THE HIGH COURT OF SINDH, KARACHI**

Const. Petition No.D-4136 of 2011

Present

Mr. Justice Aqeel Ahmed Abbasi.  
Mr. Justice Abdul Maalik Gaddi.

Date of hearing : 07.02.2019  
Date of order : 07.02.2019  
Petitioner : Tanveer Ahmed  
through Mr. Darvesh K. Mandhan,  
advocate.

**Versus**

Respondents : Federation of Pakistan and others  
through Mr. Muhammad Aqeel  
Qureshi, advocate & Ms. Lubna  
Pervaiz, Deputy Attorney General.

Learned counsel for the petitioner submits that during pendency of instant petition, demand created pursuant to Order-in-Original No.21/2010 dated 27.12.2010, has been deleted by the Commissioner (Appeals-II) Inland Revenue, Karachi, vide order dated 25.05.2011 passed in Order-in-Appeal No.77 of 2011, whereas, the Appellate Tribunal Inland Revenue (Pakistan), Karachi, has been pleased to dismiss the appeal filed by the department vide order dated 01.06.2012 passed in STA No.106/K-2011. Per learned counsel, department filed a rectification application being M.A (Rect.) No.78/KB/2012 in STA No.106/K/2011 (Tax periods July 2008 – June 2009), before the Appellate Tribunal Inland Revenue (Pakistan), Karachi, which has also been dismissed vide order dated 07.10.2013, therefore, according to learned counsel, no demand is outstanding against the petitioner for the Tax Periods July 2008 – June 2009 towards sales tax liability. Per learned counsel, impugned Show Cause Notice dated 15.12.2011 was issued under Section 21(2) of the Sales Tax Act, 1990, by the Commissioner Inland Revenue, Zone-IV, R.T.O.II, Karachi, in respect of recovery of demand which was outstanding against the company for which a

cheque bearing No.6476599 dated 18.10.2011, amounting to Rs.5,500,000/-, was obtained from petitioner through coercion, however, since no demand is outstanding presently against the petitioner, therefore, said demand notice is liable to be set-aside. It has been further submitted by the learned counsel for the petitioner that respondents may be directed to vacate the impugned Show Cause Notice and to return the two cheques furnished by the petitioner under protest before the Commissioner Inland Revenue, Zone-IV, RTO-II, Karachi, or alternatively, may be directed not to take any adverse action against the petitioner in respect of aforesaid two cheques, as according to learned counsel, presently, there is no outstanding demand of sales tax against the petitioner.

2. While confronted with hereinabove factual position, learned counsel for the respondent as well as learned DAG could not controvert the same, and submit that respondents do not intend to proceed against the petitioner pursuant to impugned Show Cause Notice, nor the two cheques furnished by the petitioner before the Commissioner Inland Revenue, Zone-IV, RTO, Karachi, as referred to hereinabove, will be presented for encashment, which according to learned counsel for respondents otherwise have become stale. It has been submitted that instant petition may be disposed off as purpose has been served out.

3. Learned counsel for the petitioner at this juncture further submits that in addition to two cheques as referred above, certain other amount was also paid by the petitioner under protest, as the respondents started coercive proceedings for the recovery, therefore, it has been prayed that petitioner may be allowed to file appropriate application before the concerned Commissioner, Inland Revenue for Refund of such amount, which according to learned counsel, was paid in addition to the tax liability against the petitioner under protest, whereas, respondents may be directed to process the refund claim at an early date.

4. Accordingly, instant petition stands disposed of with the directions to the respondents not to proceed against the petitioner pursuant to impugned Show Cause Notice dated 15.12.2011, whereas, the two cheques furnished by the petitioner before the Commissioner Inland Revenue, Zone-IV, RTO, Karachi, as referred to hereinabove, shall be either returned to the petitioner or the same

shall not be presented for encashment as the same have otherwise become stale. However, petitioner will be at liberty to seek refund of such amount, if paid, in excess of its tax liability, which shall be considered by the respondents strictly in accordance with law, whereas, such process may be completed preferably within a period of two months from the date of Refund application as may be filed by petitioner.

Petition stands disposed of in the above terms along with listed application.

JUDGE

JUDGE

Nadeem