

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

CP No.D-1756 of 2023

Date	Order with signature of Judge
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1. For orders on CMA No.8715/2023.
2. For orders on CMA No.8716/2023.
3. For orders on CMA No.8717/2023.
4. For hearing of main case.

11.04.2023

Mr. Ammar Athar Saeed, advocate for the petitioner.

1. Granted. 2. Granted, subject to all just exceptions. 3 & 4. The petitioner, represented to be a company engaged in operating amusement parks, has assailed a show cause notice dated 31.01.2023 ("Impugned Notice"), whereby the Sindh Revenue Board ("SRB") has questioned as to why the petitioner should not be compulsorily registered since it is engaged in rendering taxable services, that fall within the ambit of the Sindh Sales Tax on Services Act 2011 ("Act"). While the Impugned Notice explicitly provides an opportunity and forum to the petitioner to state its case, however, the petitioner has elected to abjure the opportunity / forum provided and approach this Court directly.

Learned counsel submitted that since the wrong tariff heading is being applied in the instance of the petitioner, therefore, the Impugned Notification has been rendered without jurisdiction. Perusal of the Impugned Notice demonstrates that economic activity being carried out by the petitioner falls within the ambit of taxation *inter alia* per tariff heading 9821.2000 of the Second Schedule to the Act. While the petitioner admits that its economic activity is covered within the Act, it is claimed that such activity is exempt.

The House of Lords¹ observed back in 1925 that charge, assessment and recovery are distinct facets of a levy. *Whitney* was cited with approval by the august Supreme Court in *H M Extraction*². *Munib Akhtar J* observed that an exemption inserts itself between the first two stages, i.e., between what is leviable and what is payable. Whether or not the proper tariff heading is being applied, resulting in an exemption or otherwise, is a question *prima facie* to be determined before the forum denoted by the Impugned Notice and the adjudication sought is *admittedly* subject to remedy provided per the statute, hence, no case appears to have been made out to seek direct recourse to this Court.

A Division Bench of this Court had sieved a myriad of commonwealth authority, in *Dr. Seema Irfan*³, and maintained that that a

¹ Per Lord Dunedin in *Whitney vs. Inland Revenue Commissioners* reported as [1926] A.C. 37 (1925) – "Now, there are three stages in the imposition of a tax: there is the declaration of liability, that is the part of the statute which determines what persons in respect of what property are liable. Next, there is the assessment. Liability does not depend on assessment. That, *ex hypothesi*, has already been fixed. But assessment particularizes the exact sum which a person liable has to pay. Lastly, come the methods of recovery, if the person taxed does not voluntarily pay."

² Per *Munib Akhtar J* in *H. M. Extraction Ghee & Oil Industries vs. FBR* reported as 2019 SCMR 1081.

³ Per *Muhammad Ali Mazhar J.* in *Dr. Seema Irfan & Others vs. Federation of Pakistan & Others* reported as PLD 2019 Sindh 516; *Deputy Commissioner Income Tax / Wealth Tax Faisalabad vs. Punjab Beverage Company (Private) Limited* reported as 2007 PTD 1347.

show-cause notice may not be justiciable in writ jurisdiction; unless it is manifest *inter alia* that the same suffers from want of jurisdiction; amounts to an abuse of process; and / or is *mala fide*, unjust and / or prejudicial towards the recipient. The Supreme Court also had occasion to consider this question recently in *Jahangir Khan Tareen*⁴ and while maintaining the ratio as aforesaid deprecated the tendency to shun the dispute resolution mechanism provided by statute.

The aforementioned ratio is squarely applicable to the present facts and circumstances. It is pertinent to observe that no case of abuse of process and / or want of jurisdiction is manifest before us. Furthermore, no case has been made out before us to consider the Impugned Notice to be *mala fide*, unjust and / or prejudicial towards the petitioner.

In view hereof, it is our considered view that the Impugned Notice merits no interference in the exercise of discretionary⁵ writ jurisdiction of this Court, hence, this petition and listed application/s are hereby dismissed in *limine*.

The petitioner remains at liberty to place its case, including without limitation the grounds taken herein, before the forum denoted vide the Impugned Notice. The respondent is expected to conduct the proceedings, envisaged vide the Impugned Notice, expeditiously and conclude the same vide a reasoned speaking order. The petitioner shall remain at liberty to assail the findings, if aggrieved, before the forum of appropriate jurisdiction.

JUDGE

JUDGE

⁴ Per Muhammad Ali Mazhar J. in *CIR vs. Jahangir Khan Tareen* reported as 2022 SCMR 92.

⁵ Per Ijaz Ul Ahsan J. in *Syed Iqbal Hussain Shah Gillani vs. PBC & Others* reported as 2021 SCMR 425; *Muhammad Fiaz Khan vs. Ajmer Khan & Another* reported as 2010 SCMR 105.