

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
C.P. No.D-4065 of 2023

Date

Order with signature of Judge

PRESENT:

Mr. Justice Aqeel Ahmed Abbasi
Mr. Justice Abdul Mobeen Lakho

FRESH CASE:

1. For order on CMA No.18730/2023 (Urgent).
2. For order on CMA No.18731/2023 (Exemption).
3. For order on CMA No.18732/2023 (Stay).
4. For hearing of main case.

Dated; 25th August 2023

Mr. Usman Shaukat, Advocate for Petitioner.

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1. Urgency granted.

2. Exemption granted subject to all just exceptions.

3&4. After hearing the learned counsel for the petitioner at some length, it appears that no cause of grievance appears to have been agitated through instant Constitutional Petition, which may require this Court to interfere with the order of Appellate Tribunal Sindh Revenue Board under Article 199 of the Constitution of Islamic Republic of Pakistan, whereas, the petitioner has already availed the remedy before the statutory forum by filing appeal against Order-in-Original and seeking stay against recovery of demand. It further appears that the Appellate Tribunal, Sindh Revenue Board has disposed of the appeal filed by the petitioner against Order-in-Appeal, whereby, stay against recovery was granted subject to deposit of 25% of demand, while granting stay subject to deposit of 10% of the disputed amount instead of 25% of the demand. Prima-facie, it appears that through a well-reasoned order the discretion as vested in the Appellate Tribunal Sindh Revenue Board in terms of Section 58 of the Sindh Sales Tax on Services Act, 2011, has been exercised fairly, keeping in view the

peculiar facts of the case, whereas, no error or illegality has been pointed by the learned counsel for the petitioner in this regard.

While confronted with hereinabove factual and legal position, learned counsel for the petitioner could not submit any reasonable explanation, except the ground that the Order-in-Original passed in the instant case is totally illegal, whereas, inspite of directions issued by the Commissioner (Appeals) Sindh Revenue Board requiring the department to re-examine the ratios and submit report, the needful has not been done, nor the appeal of the petitioner has been decided, therefore, according to learned counsel, since the petitioner having no other remedy has approached this Court under Article 199 of the Constitution for the recovery of entire demand till final decision in appeal. This ground alone, would not justify filing of instant petition, as it would amount to providing a forum to seek stay against recovery of disputed amount of tax without hearing the main appeal on merits, which is admittedly pending before the statutory forum.

Accordingly, instant petition is dismissed along with listed application. However, petitioner may approach the Commissioner (Appeals) Sindh Revenue Board for early hearing and disposal of appeal of the petitioner, whereas, it is expected that Commissioner (Appeals) Sindh Revenue Board may decide the appeal within fifteen (15) days from the date of receipt of this Court after hearing the parties, however, till then, respondents may not enforce the recovery of the disputed amount.

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