

IN THE HIGH COURT OF SINDH AT KARACHI

C.P. No.D-4245 of 2018

[M/s. Saba Internationalv..... The Federation of Pakistan & others]

Present: **Justice Ms. Sana Akram Minhas**
Mr. Justice Arbab Ali Hakro

Petitioner through : Mr. Iftikhar Hussain, Advocate

Respondents through : M/s. Pervaiz Ahmed Memon, Mohabbat Hussain Awan & Syed Raza Mamnoon, Advocates.

Ms. Sara Malkani, Assistant Attorney General.

Dates of Hearing : 04.12.2024

Date of Decision : 21.12.2024

J U D G M E N T

ARBAB ALI HAKRO, J:- Through this Constitutional Petition, the petitioner has challenged the issuance of Show-Cause Notice No.Adj-II/Coll/SCN-312/DIT-KHI/Seizure-Cum-Cont-Rep/190-Appg-I/Saba Intl/2018 dated 10.04.2018 ("**Show Cause Notice**") by Respondent No.2, seeking a declaration that it was issued illegally and without jurisdiction.

2. The succinct facts leading to the captioned petition are that the petitioner is a manufacturer, importer, and exporter of textiles registered in accordance with Section 14 of the Sales Tax Act, 1990. It is claimed that, as a manufacturer, importer, and exporter of textiles, the petitioner is entitled to avail the benefit of the concessionary rate of sales tax under SRO-1125(I)/2011 dated 31.12.2011 for the determination of its sales tax and income tax liabilities. The memorandum of the petition alleges that Respondent No.2 issued the impugned Show Cause Notice to the petitioner based on a contravention report prepared by Respondent No.3 following the seizure of two consignments belonging to the petitioner. The Show Cause Notice alleges that the petitioner evaded taxes, the details of which are outlined in the Show Cause Notice, hence this petition.

3. In deference to the summons & notice, Respondent No.3 filed its stance challenging the very maintainability of the instant petition. Per the Respondent Department, the petitioner has an alternate remedy per prescriptions of Sections 179, 185, 194A and 196 of the Customs Act, 1969 for the redressal of its grievances. The Respondent Department, being a fact-finding body, is authorized to evaluate the factual controversy involved in the instant petition, which can't be decided by this Hon'ble Court under its writ jurisdiction. Therefore, the petition isn't maintainable and is liable to be dismissed. It is alleged by the Respondent

Department that the petitioner is claiming undue benefit of exemption under the SRO as demonstrated in the preceding paragraph for getting clearance of the consignments, i.e. "Polyester Textured Yarn" and "Viscose Filament Twist Yarn", but the fact is that the Sales Tax Registration of the petitioner is under suspension and on a surprise visit of the Respondent Department, the consignments were intercepted.

4. At the very outset, the learned counsel for the petitioner commenced his submissions by contending that customs, income tax, sales tax, and excise are governed by distinct constitutional frameworks, each operating within separate domains. He asserted that chargeability, assessment, and recovery functions are discrete and specific, as mandated by statute. While Customs authorities are vested with the authority to collect taxes at the import stage, this authority does not encompass the jurisdiction to assess, adjudicate, and recover income tax and sales tax post-clearance of consignments. The counsel further contended that Respondent No.2, as the Customs Authority, is devoid of jurisdiction to re-assess the petitioner's consignments after their clearance. Consequently, issuing the impugned Show-Cause Notice is considered ultra vires, unconstitutional, and liable to be quashed ab initio. In conclusion, the counsel posited that in the manifest presence of specific statutory provisions for the assessment, adjudication, and recovery of income tax and sales tax delineated in their respective parent statutes, namely the Income Tax Ordinance, 2001, and the Sales Tax Act, 1990, any interference by Respondent No.2 with respect to cleared consignments is devoid of merit. Therefore, the impugned Show-Cause Notice may be set aside. In support of his contentions, he has relied upon the case of Nestle Pakistan Limited vs The Federation Board of Revenue and others reported as 2023 PTD 527 and the unreported Order dated 31.8.2023, passed in Special Customs Reference Application No.123 of 2016 by the Divisional Bench of this Court.

5. In opposition to the above submissions, the learned counsel representing the Respondents contended that the petition is not maintainable¹, as the petitioner has an alternate remedy before the Respondent Department to reply to the Show-Cause Notice. They argued that where a proper forum is functional and addressing grievances, the High Court, under Article 199 of the Constitution, should refrain from entertaining a writ against the Respondent Department. The learned Departmental Counsel further contended that the petitioner evaded tax liabilities and imported consignments that do not qualify for the benefit of the SRO claimed by the petitioner. They asserted that the consignments were wrongly cleared but are currently in a bonded warehouse, and after examining the

¹ Commissioner Inland Revenue & others v. Jahangir Khan Tareen & others (2022 SCMR 92)

consignments, the subject Show-Cause Notice was issued to the petitioner. Their pivotal contention is that the term "taxes" in Section 32² and 179³ of the Customs Act, 1969 confers concurrent jurisdiction upon the Customs Department to assess, recover, or adjudicate any alleged short levy of income tax and sales tax, even post-release or clearance of consignments.

6. The learned Assistant Attorney General endorsed the submissions of the learned counsel for the Department/Respondents.

7. The submissions have been exhaustively deliberated upon, and the extant record has been assiduously scrutinized with the invaluable assistance of the learned counsel for the parties.

8. A cardinal principle in the exercise of writ jurisdiction is the doctrine of judicial restraint, particularly with regard to constitutional adjudication. This principle dictates that courts refrain from deciding constitutional questions if a case can be resolved on other, narrow grounds.⁴ The rationale behind this is to avoid unnecessary constitutional rulings, which could have far-reaching and unintended consequences. Courts are urged to adopt a minimalist approach, addressing only the specific issues necessary for the determination of the case at hand. By doing so, courts ensure that broader constitutional principles are not unnecessarily invoked or interpreted, thus maintaining judicial prudence and restraint. Furthermore, it underscores the importance of resolving disputes through the most direct and least expansive means, respecting the separation of powers and avoiding encroachments on legislative and executive functions. In summary, this principle safeguards the judiciary's role within its constitutional mandate by ensuring that only the requisite and narrowly focused questions are addressed in judicial decisions.

9. In the present case, Respondent No.2 issued a Show Cause Notice to the petitioner based on a Seizure-Cum-Contravention Report dated 03.04.2018. The notice calls upon the petitioner to explain under the provisions of Sections 32(1), 32(2), 32A, and 79(1) of the Customs Act, 1969, Sections 3, 6, and 7A of the Sales Tax Act, 1990, and Section 148 of the Income Tax Ordinance, 2001, why the evaded amount of taxes mentioned in the Show Cause Notice should not be recovered from them. Additionally, the notice seeks an explanation as to why penal action should not be taken under clauses (1), (14), and (14A) of Section 156 of the Customs Act, 1969, Section 33 of the Sales Tax Act, 1990, and Section 148

² S.32 (2) Where, by reason of any such document or statement as aforesaid or by reason of some collusion, any duty, **taxes** or charge has not been levied or has been short-levied or has been erroneously refunded, the person liable to pay any amount on that account shall be served with a notice.....

³ S.179. Power of adjudication. (1) Subject to subsection (2), in cases involving confiscation of goods or imposition of penalty under this Act or the rules made thereunder, the jurisdiction and powers of adjudication of the Officers of Customs in terms of the amount of duties and other **taxes** involved, ...

⁴ Per Saqib Nisar J in LDA & Others vs Imrana Tiwana & Others reported as 2015 SCMR 1739

of the Income Tax Ordinance, 2001. In response, the petitioner has filed a writ petition directly challenging the Show Cause Notice. In the case of Jahangir Khan Tareen (2022 SCMR 92), the Supreme Court of Pakistan elaborated on the principles governing the issuance and challenge of show-cause notices, observing that: -

"11. A show cause notice is delivered to a person by an authority in order to get the reply back with a reasonable cause as to why a particular action should not be taken against him with regard to the defaulting Act. By and large, it is a well-defined and well-structured process to provide the alleged defaulter with a fair chance to respond the allegation and explain his position within reasonable timeframe. Even in case of an adverse order, the remedies are provided under the tax laws with different hierarchy or chain of command. The court may take up writs to challenge the show cause notice if it is found to be barred by law or abuse of process of the court. The Abuse of process is the use of legal process for an improper purpose incompatible with the lawful function of the process by one with an ulterior motive. In its broadest sense, abuse of process may be defined as misuse or perversion of regularly issued legal process for a purpose not justified by the nature of the process. Whereas coram non iudice is a Latin word meant for "not before a judge," is a legal term typically used to indicate a legal proceeding that is outside the presence of a judge or with improper venue or without jurisdiction. In the case of Indus Trading and Contracting Company vs Collector of Customs (Preventive) Karachi and others (2016 SCMR 842), this court held that where a special law provides legal remedy for the resolution of a dispute, the intention of the legislature in creating such remedy is that the disputes falling within the ambit of such forum be taken only before it for resolution. Such bypass of the proper forum is contrary to the intention of the provisions of Article 199(1) of the Constitution, which confers jurisdiction on the High Court only and only when there is no adequate remedy available under any law. Where adequate forum is fully functional, the High Court must deprecate such tendency at the very initial stage and relegate the parties to seek remedy before the special forum created under the special law to which the controversy relates.

12. At this point in time, the respondent has only been issued a show cause notice to submit the reply, which does not mean or pre-empt that the issuance of show cause will entail or lead to an adverse order or action against the respondent No.1. It is most commonly noticed that whenever a show cause notice is issued by the hierarchy provided under the tax laws calling upon the taxpayer to submit the reply, they immediately challenge the show cause notice in writ jurisdiction with the presumption or presupposition that the show cause notice means an adverse order against them, so in our considerate appraisal, abstinence from interference at the stage of issuance of show cause notice in order to relegate the parties to the proceedings before the concerned authorities must be the normal rule. The challenge to show cause notices in writ jurisdiction at premature stages and tendency to bypass the remedy provided under the relevant statute is by and large deprecated and disapproved in many dictums laid down in local and foreign judgments in which courts have considered the interference as an act of denouncing and fettering the rights conferred on the statutory functionaries specially constituted for the purpose to initially decide the matter....."

10. This Court exercises its jurisdiction under Article 199 of the Constitution to issue writs in cases where an individual's fundamental rights are infringed, or there is a lack of jurisdiction, illegality, or procedural impropriety. A writ petition may be maintainable if the petitioner can establish that the Show-Cause Notice was issued without jurisdiction or in violation of the principles of natural justice. One of the primary considerations in determining the maintainability of a writ petition is whether the petitioner has an alternate and efficacious remedy available. Courts generally emphasize the exhaustion of all statutory remedies before invoking writ jurisdiction. In the context of customs disputes, the petitioner typically has the opportunity to respond to the Show-Cause Notice, participate in adjudication proceedings, and, if aggrieved by the decision, file an appeal under the relevant provisions of the Customs Act, 1969.

11. The statutory provisions for assessing, adjudicating, and recovering income tax and sales tax are delineated in their respective parent statutes, namely the Income Tax Ordinance, 2001, and the Sales Tax Act, 1990. Any interference by the Customs Authorities concerning cleared consignments must be substantiated by clear statutory authority. Based on the contentions of the learned counsel for the petitioner, it was argued that the issuance of the Show-Cause Notice by the Customs Authorities (Collector Customs Adjudication-II) is mala fide, vexatious, and without lawful authority and jurisdiction. The petitioner asserts that the matter pertains to the alleged short levy of Sales Tax and Income Tax, which fall under the jurisdiction of the Commissioner Inland Revenue, not the Customs Authorities. The counsel contends that once goods have been cleared by the Customs Authorities with the zero-rating facility under SRO-1125(I)/2011 dated 31.12.2011, the Customs Authorities become functus officio concerning any alleged short levy of Sales Tax; therefore, the Customs Authorities should only inform the Commissioner Inland Revenue of any such alleged acts, and any further action, including the issuance of a Show-Cause Notice or adjudication proceedings, by the Customs Authorities is without jurisdiction and lawful authority.

12. Upon careful consideration of the petitioner's arguments, it is important to emphasize that the issuance of a show cause notice is a procedural step intended to afford the petitioner an opportunity to respond to the issues raised by the authorities. The fundamental principle behind a show cause notice is to uphold the principles of natural justice, allowing the petitioner to present his case before any conclusive or adverse determination is made. The petitioner has only been issued a show cause notice requesting a reply, which does not imply or preempt that an adverse order or action will necessarily follow. Such a notice aims to initiate a dialogue, ensuring the petitioner is given a fair chance to address the concerns raised. It is a preliminary measure that does not inherently carry any adverse

implications until a decision is reached based on the petitioner's response. Challenging the issuance of a show cause notice in a constitutional petition without any conclusive or adverse order is generally considered premature. The mere issuance of a show cause notice does not constitute a final decision or action by the authorities. It is an essential part of due process, designed to ensure transparency and fairness in administrative proceedings. In this context, the petitioner's obligation is to submit a reply to the show cause notice, engaging with the procedural requirements set forth by the authorities. The court's intervention at this stage is not warranted, as it would disrupt the administrative process and undermine the procedural safeguards intended to protect the petitioner's rights. Therefore, the argument that issuing a show cause notice alone warrants constitutional intervention is untenable. The show cause notice is a procedural instrument aimed at providing the petitioner with an opportunity to be heard. Without any conclusive or adverse order from the authorities, this constitutional petition's challenge to the show cause notice is deemed premature and lacks merit.

13. For the foregoing reasons, it is evident that the petitioner has already filed a response to the impugned show cause notice by raising the question of jurisdiction in compliance with the order dated 30.05.2018 passed in this petition. Therefore, it would be appropriate for these jurisdictional issues to be raised before Respondent No. 2 (Collector of Customs). The Collector of Customs must first determine whether they have the jurisdiction to proceed with the matter before taking any further action, ensuring adherence to procedural propriety and statutory mandates. With these observations, the petition stands **disposed of**.

JUDGE

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