

## IN THE HIGH COURT OF SINDH AT KARACHI

CP D 4050 of 2019 : Pakistan Beverages Limited  
vs. Federation of Pakistan & Others

CP D 4051 of 2019 : Pakola Products Limited  
vs. Federation of Pakistan & Others

For the Petitioner/s : Mr. Ovais Ali Shah, Advocate

For the Respondent/s : Syed Irshad-ur-Rehman, Advocate  
Mr. Shamshad Ahmad Narejo, Advocate  
Mr. Naveed-ul-Haq, Advocate

Ms. Rabia Khalid,  
Assistant Attorney General of Pakistan

Mr. Kafil Ahmed Abbasi,  
Additional Advocate General Sindh

Date/s of hearing : 12.12.2024

Date of announcement : 12.12.2024

### ORDER

**Agha Faisal, J.** Per learned counsel, the representative facts herein are that the petitioners have assailed respective show cause notices issued by the FBR per section 11 of the Sales Tax Act 1990.

The notices were issued in 2019; *ad interim* orders were obtained in 2019, halting the entire process and restraining the impugned notices from being concluded, subsisted till date; however, notwithstanding the foregoing the order sheet demonstrates that no substantial progress has taken place herein ever since.

The impugned notices provide an opportunity and forum to the petitioners to state their case, however, the petitioners have unjustifiably elected to abjure the opportunity / forum provided and approach this Court directly. No case has been set out as to why the any reservation with regard to the impugned notices could not have been taken before the issuing authority. Default by the petitioners in seeking recourse before the statutory hierarchy could not be demonstrated to denude the statutory forum of its jurisdiction; or confer the same upon this court. Therefore, no case could be articulated for direct recourse to writ jurisdiction in the presence of adequate remedy having been provided under the law.<sup>1</sup>

A Division Bench of this Court had sieved a myriad of commonwealth authority, in *Dr. Seema Irfan*<sup>2</sup>, and maintained that that a 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

<sup>1</sup> Reliance is placed upon PLD 2016 Sindh 168.

<sup>2</sup> 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*.

Court also had occasion to consider this question in *Jahangir Khan Tareen*<sup>3</sup>, approved in Judgment dated 15.09.2022 rendered in *DCIR vs. Digicom Trading (CA 2019 of 2016)*, 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 articulated before us to consider the impugned notices to be *mala fide*, unjust and / or prejudicial towards the petitioners.

In summation, no case has been set forth before us to merit the invocation of the discretionary<sup>4</sup> writ jurisdiction of this Court; therefore, these petitions are hereby dismissed.

The petitioners remain at liberty to place their case, including without limitation the grounds taken herein, before the forum denoted vide the impugned notices. The respondent department is expected to conduct the proceedings, envisaged vide the impugned notices, expeditiously and, after providing an opportunity of hearing to the petitioners, conclude the same vide reasoned speaking order/s. The petitioners shall remain at liberty to assail the findings, if aggrieved, before the forum of appropriate jurisdiction.

The office is instructed to place a copy hereof in the connected file.

Judge

Judge

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<sup>3</sup> Per Muhammad Ali Mazhar J. in *CIR vs. Jahangir Khan Tareen* reported as 2022 SCMR 92.

<sup>4</sup>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.