

THE HIGH COURT OF SINDH, KARACHI

Suit No. 437 of 2024

[Exide Pakistan Ltd. v. Federation of Pakistan & others]

Plaintiff : Exide Pakistan Ltd. through Mr. Ovais Ali Shah, Advocate.

Defendant No.1 : Federation of Pakistan through Mr. Nisar Ali Naushad Babar, Assistant Attorney General.

Defendant No. 2 : Nemo.

Defendant No. 3 : The Commissioner Inland Revenue Zone-II, through Mr. Ameer Bakhsh Metlo, Advocate along with Ms. Zakia, Advocate.

Date of hearing : 06-02-2025

Date of decision : 06-02-2025

ORDER

Adnan Iqbal Chaudhry J. - The suit has been brought to challenge a 'pre-suspension notice' dated 19.04.2024 issued to the Plaintiff by the Commissioner-IR for initiating suspension/blacklisting proceedings under section 21(2) of the Sales Tax Act, 1990 read with Rule 12 of the Sales Tax Rules, 2006 [**impugned notice**]. By CMA No. 6447/2024, the Plaintiff prays for a temporary injunction to restrain the Commissioner-IR from taking coercive action against the Plaintiff.

2. Learned counsel submits that the allegation in the impugned notice that the Plaintiff claimed input tax adjustments on the basis of fake/flying invoices is completely unsubstantiated; and the allegation that the Plaintiff made purchases from a suspended vendor is also belied by the notice itself which shows that at the relevant time the said vendor was not suspended. Learned counsel therefore submits that the impugned notice is *malafide*.

3. Heard learned counsel and perused the record. The impugned 'pre-suspension' notice is essentially a notice to show-cause against

suspension of sales tax registration. It is a precursor to blacklisting proceedings. By virtue of sub-section (5) of section 21 of the Sales Tax Act, which has been inserted by the Finance Act 2024, a remedy is now available to the Plaintiff before the Chief Commissioner in the event an order of suspension is passed against the Plaintiff. Though that provision was inserted in the statute after the suit was filed, it is settled law that an amendment in statute to provide a forum is procedural in nature and therefore operates retrospectively.¹

4. It is by now also settled that excepting a jurisdictional defect, a Court of law does not ordinarily interfere with a show-cause notice issued by a statutory authority lest such interference stifles the exercise of fact-finding and provides an escape from special statutory proceedings and remedies.² The grounds urged by learned counsel for interference are on the facts of the case and do not go to the jurisdiction of the Commissioner-IR in issuing the impugned notice. Those facts have been laid by the Plaintiff before the Commissioner-IR who has yet to pass any order thereon. He may well agree with the Plaintiff. The temporary injunction sought in effect requires this Court to determine to those facts instead of the Commissioner-IR.

5. In view of the foregoing, since the Plaintiff does not bring forth any exception for interfering with the impugned notice, CMA No. 6447/2024 is dismissed.

JUDGE

*PA/SADAM

¹ *Income Tax Peshawar v. Islamic Investment Bank Ltd.* (2016 SCMR 816) and *Air League of PIAC Employees v. Federation of Pakistan* (2011 SCMR 1254).

² *Commissioner of Income Tax v. Hamdard Dawakhana (Waqf)* (PLD 1992 SC 847); *Deputy Commissioner of Income Tax v. Punjab Beverage Company (Pvt.) Ltd.* (2007 PTD 1347); *Indus Trading and Contracting Company v. Collector of Customs (Preventive) Karachi* (2016 SCMR 842); *Dr. Seema Irfan v. Federation of Pakistan* (PLD 2019 Sindh 516); *Commissioner Inland Revenue v. Jehangir Khan Tareen* (2022 SCMR 92); *Zain ul Abideen v. Federal Board of Revenue* (PLD 2021 Sindh 130); *Pakistan Petroleum Ltd. v. Pakistan* (2022 PTD 1742).