

**ORDER SHEET**  
**HIGH COURT OF SINDH, KARACHI**

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C.P. No.D-8923 of 2017

Date	Order with signature of Judge
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**Present**

**Mr. Justice Muhammad Ali Mazhar.**

**Mr. Justice Agha Faisal.**

M/s. Highland Traders & others.....Petitioners

Versus

Federal Board of Revenue & others .....Respondents

**Date of hearing 15.05.2019**

Mr. Mazhar ul Hassan, Advocate for the petitioners.

Mr. Kafeel Ahmed Abbasi, Advocate for the Tax Department.

Mr. Hussain Bhora, Assistant Attorney General.

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**Muhammad Ali Mazhar, J:** Basically, the petitioners have approached this court for restraining order against the respondents not to collect tax of Rs.26455841/- under the misinterpretation of Section 11(2) read with Section 7 and 8 of Sales Tax Act, 1990.

2. Learned counsel pointed out a show cause notice dated 09.11.2017 which was issued by Deputy Commissioner-IR under Section 11(2) of the Sales Tax Act, 1990 for the period of July 2013 to June 2016 in which allegation has been leveled against the adjustment of wrong input tax of Rs.26455841/- which according to the Deputy Commissioner-IR not related to the taxable purchases/input of the petitioners hence the petitioners have been called upon to submit explanation with regard to adjustment/claim of input tax which was not admissible in terms of Section 8(1) of the Sales Tax Act, 1990. In the show cause notice the year wise details have also been mentioned for the convenience of the petitioners to respond.

3. Learned counsel for the petitioners pointed out a copy of assessment order No.31/2017 passed by the Assistant Commissioner-IR. He referred to paragraph No.2 of the order at type page 2 in which the Assistant Commissioner held that the

petitioner declared meager local sales but as per details available on e-portal of FBR the amount of Rs. 17,787,471/- has been deducted from M/s. High Land Traders upon the receipts against supplies of goods, working back of the amount at the rate of 3.5% comes to Rs.508,213,457/- which was the value of sales during the period July 2014 to Jan 2017, however, the complete sales tax has not been shown in the sales return. Learned counsel argued that against this order the appeal was filed to the Commissioner-Appeals and the Commissioner-Appeals has set aside the order with the observation that assessment order No. 31/2 of 2017 has been passed beyond the mandatory prescribed period which is not sustainable.

4. At this juncture, Mr. Kafeel Ahmed Abbasi, learned counsel for the Tax Department submits that against the order of Commissioner Appeals, the department has already preferred an appeal to the Appellate Tribunal Inland Revenue which is pending. Learned counsel for the petitioners submits that earlier order has been set aside by the Commissioner Appeals but the similar grounds have been raised in the show cause notice again, whereas, Mr. Kafeel Ahmed Abbasi, learned counsel for the Tax Department submits that on the face of it the grounds are different and overlapping.

5. Be that as it may, it is clear that in the show cause various factual controversies have been raised which can be examined by the Department and according to the petitioners' counsel, the reply has already been submitted. The petitioners through their authorized representatives may appear before the Deputy Commissioner, who issued the show cause notice and after providing ample opportunity of hearing, the orders in accordance with law may be passed by the Deputy Commissioner. The petitioners may take all available grounds to defend the show cause before the Deputy Commissioner for its consideration. Till final order passed on the show cause notice the tax department shall not take any coercive action against the petitioners. The petition is disposed of along with pending application in the above terms.

JUDGE

JUDGE