

ORDER SHEET  
**IN THE HIGH COURT OF SINDH, KARACHI**  
**C. P. NO. D-1329 / 2016**

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Date \_\_\_\_\_ Order with signature of Judge \_\_\_\_\_

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**PRIORITY.**

- 1) For hearing of CMA No. 6004/2016.
- 2) For hearing of main case.

**20.10.2020.**

Mr. Ahmed Hussain Advocate for Petitioner.  
Mr. Muhammad Ahmar Assistant Attorney General.

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Through this Petition, the Petitioner has impugned selection for audit under Section 72-B of the Sales Tax Act, 1990 as being without jurisdiction and lawful authority.

Learned Counsel for the Petitioner though concedes that the question of selection for audit under Section 72-B of the Sales Tax Act, 1990 now stands decided by the Hon'ble Supreme Court in the case reported as ***Commissioner of Inland Revenue, Sialkot and others V. Messrs Allah Din Steel and Rolling Mills and others (2018 SCMR 1328)***, however, according to him the facts of the present case are somewhat different and the said judgment would not apply inasmuch as for the period in question i.e. July, 2013 to June 2014, the Petitioner was issued a Show Cause Notice after selective analysis and audit culminating into an order in original and thereafter, in Appeal before the Appellate Tribunal Inland Revenue wherein, the Petitioner stands successful and against which no further proceedings are pending and therefore, it is a case of double jeopardy and the selection of the Petitioner through computer balloting by the Board is unjustified. He has therefore, prayed that the impugned Notice of selection be set aside.

On the other hand, learned Assistant Attorney General has referred to the comments filed by the Department and submits that Petition is not maintainable challenging the Show Cause Notice and therefore, the same is liable to be dismissed.

We have heard the learned Counsel for the Petitioner and the learned Assistant Attorney General. Perusal of the record reflects that before issuance of the impugned Notice and the selection of the Petitioner

for audit through computer balloting on 26.02.2015, the Petitioner was confronted by the Department on various issues pursuant to some analysis report. The Petitioner responded to such notice and thereafter, on 17.04.2015 a Show Cause Notice was issued after which order in original dated 27.05.2015 was passed against the Petitioner. Perusal of the Show Cause Notice and the order in original reflects that the tax period involved is the same i.e. July, 2013 to June 2014 and such fact has been admitted in the comments. The Petitioner thereafter, filed an Appeal before the Tribunal which also stands decided in favour of the Petitioner and again it is admitted in the comments that no further proceedings are pending. Perusal of the order in original reflects that the basis of such proceedings was pursuant to some analysis as well as audit observations of the Department. In that case, once the Petitioner was already subjected to audit and some analysis pursuant to which a Show Cause Notice and an order was passed; the selection of the Petitioner's name for random balloting by FBR is per se illegal and a case of double jeopardy. It appears that while collecting data of the tax payers for random selection, such fact has apparently been ignored and not taken into consideration. The tax period involved is same, whereas, the department cannot be permitted to have benefit of their inefficiency or negligence, as apparently they have admitted in comments that no Reference Application was filed against the order of Appellate Tribunal; but only a rectification application. Therefore, if the impugned selection for audit is maintained or permitted to be acted further, it would add premium to the casual attitude of the department. We are unable to permit such conduct.

In view of hereinabove facts and circumstances of this case and the discussion as above, a case for indulgence is made out by the Petitioner as apparently, for the tax period in question the Petitioner is being subjected to a double jeopardy and therefore, by allowing this Petition we hereby set aside the impugned Notice of selection and the proceeding(s) if any, conducted thereafter.

Petition stands allowed in the above terms.

**J U D G E**

Arshad/