

IN THE HIGH COURT OF SINDH AT KARACHI

Present: **Muhammad Junaid Ghaffar and Agha Faisal, JJ.**

CP D 5662 of 2015 : Shapar (Private) Limited vs.
Federation of Pakistan & Others

For the Petitioner : Mr. All Sibtain Fazli, Advocate

For the Respondent : Mr. Kafeel Ahmed Abbasi
(Deputy Attorney General)

Date of hearing : 16.11.2020

Date of announcement : 16.11.2020

JUDGMENT

Agha Faisal, J. The Petitioner has assailed a Show Cause Notice¹ on the premise that the earlier departmental proceedings in respect of the same subject matter were decided in favor of the petitioner, hence the Impugned Notice was without jurisdiction and/or justification.

2. Petitioner's learned counsel submitted that an earlier Show Cause Notice² was issued to the petitioner and in pursuance thereof an Order-in-Original³ was also passed and recovery notice⁴ was also issued. However, the entire proceedings were annulled by the learned Commissioner Appeals vide the Order-in-Appeal⁵. It was demonstrated from the record that the Impugned Notice was issued subsequently for the same purpose, period and on the same grounds, hence, could not be sustained in law.

3. The respondents' contention⁶ was that since the earlier proceedings culminated on technical / curable grounds, therefore, issuance of a fresh show cause notice, upon the same facts and circumstances, was merited.

4. We have heard respective learned counsel and considered the law and documentation to which our attention was solicited. There appears to be consensus that the fact that the issues, period and grounds invoked vide the Impugned Notice were common to the proceedings earlier adjudicated, therefore, the only issue for determination before us is whether in the present facts and circumstances issuance of the Impugned Notice was merited. It is

¹ Show Cause under Section 11(2) of the Sales Tax Act, 1990, dated 04.09.2015 (Impugned Notice“).

² Show Cause under Section 11(2) of the Sales Tax Act, 1990, dated 09.05.2015.

³ dated 15.06.2015.

⁴ Recovery Notice under Section 48(1)(b) of the Sales Tax Act, 1990 dated 29.06.2015.

⁵ Order in Appeal, heard on 03.08.2015, at page 157 of the File (“Appellate Order”).

⁶ Articulated by Mr. Kafeel Ahmed Abbasi, Advocate.

considered illustrative to commence this deliberation by reproducing the operative findings contained in the Appellate Order:

"4. I have considered the grounds of appeal arguments of both the AR and the DR and gone through the Impugned order and relevant record. My findings and basis thereof are as follows.

4.1 Without touching the merits or otherwise of the case a comparison of the show-cause notice and resulting impugned order reveals a glaring distinction and discontent between the two statutory documents. It is evident that the learned officer has passed impugned order beyond the vires of show-cause notice and the appellant was never confronted on allegations established in the said order, the learned officer has initiated proceedings on the basis of show-cause notice dated 09.05.2015 filed regarding allegations confronted in the said show-cause notice which fact is mentioned in para 3 of the impugned order. The learned officer after admitting appellant's response in para 3 of the impugned order has summarily rejected the same in para 4 of the said order. Astonishingly in paras (a) to (j) of the Impugned order the learned officer has discussed allegations which were not part of show-cause notice dated 09-05-2015. After rejecting response of the appellant's AR in para 4 of the impugned order the learned officer proceeded to establish allegations as per paras (a) to (j) of the impugned order ignoring the fact that such allegations were never confronted to the appellant. The learned officer has thus committed a fatal legal error due to unnecessary haste rendering the impugned order unsustainable. The Superior Courts in cases reported as 2010 PTD 1515, 209 PTD 299 and 2003 GST 521 have held that orders passed beyond the vires of show-cause notice are illegal, void and liable to be struck down. Therefore, in the fitness of things and in the greater interest of justice I have no hesitation to annul the impugned order."

5. It is admitted that the relevant issues and time period are common between the Impugned Notice and the earlier show cause notice⁷, proceedings in respect whereof culminated in the Appellate Order. Per petitioner's counsel, the Appellate Order appears to have been appealed before the learned Appellate Tribunal Inland Revenue and a copy of the two cover pages thereof, showing that the order impugned was the Appellate Order, has also been placed before us. Learned counsel for the respondents has not controverted the veracity of the document placed before us, however, has submitted that the subject appeal or the fate thereof is not within his knowledge. Learned counsel graciously adverted to the Division Bench judgment of this Court in the *Fateh Textile Mills*⁸ case to denote that the terms *annul*, as employed in the Appellate Order, and *set-aside* were to be construed as synonymous.

6. In this context it is our considered view that no case has been set forth before us to justify the issuance of the Impugned Notice when in fact the remedy of an appeal against the Appellate Order remained available to the respondents. Therefore, in the present facts and circumstances, the Impugned Notice appears to be an abuse of process and manifestly unjust / prejudicial towards the petitioner, hence, cannot be sustained⁹ and is hereby set aside.

JUDGE

JUDGE

⁷ Show Cause under Section 11(2) of the Sales Tax Act, 1990, dated 09.05.2015.

⁸ *Commissioner (Legal) Inland Revenue vs. Fateh Textile Mills Limited* reported as 2020 PTD 203.

⁹ Per *Saeeduzzaman Siddiqui J. in PIA vs. CBR & Others* reported as 1990 CLC 868; *Assistant Collector Customs & Others vs. Khyber Electric Lamps & Others* reported as 2001 SCMR 838.