

ORDER SHEET
IN THE HIGH COURT OF SINDH KARACHI
Suit No.633 of 2017.

DATE	ORDER WITH SIGNATURE OF JUDGE
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For hearing of CMA No.4840 of 2017.

17.11. 2020

Mr. Hyder Ali Khan, Advocate for the Plaintiff.
Mr. Shahid Ali Qureshi, Advocate for the Defendant No.2.

The Plaintiff has challenged show-cause notices issued under section 14 of the Federal Excise Act, 2005 which assert that the Plaintiff is liable to pay excise duty on services rendered during the period 01-01-2010 to 31-12-2013. By an interim order dated 07-03-2017, the department was restrained from proceeding further with the show-cause notices. On 27-06-2018, in the case of *Searle IV Solution (Pvt.) Ltd. v. Federation of Pakistan* (2018 SCMR 1444), the Hon'ble Supreme Court of Pakistan directed that:

“17. Keeping in view the alarming allegations made above, it is directed, that while the Single Bench of the Sindh High Court at Karachi may still take cognizance of any suit arising out of an action/order of the tax authorities/Customs Officers, such jurisdiction must be sparingly exercised by the Single Bench and the suits must be expeditiously decided within the period of one year or less so that these suits are not used by aggrieved parties as a means to deprive the Public Exchequer of the taxes due for years on the basis of interim injunctions. Furthermore, as a guiding principle, to bring some certainty and uniformity in the treatment of such suits, the suits filed and those that have already been filed must only be entertained on the condition that a minimum of 50% of the tax calculated by the tax authorities is deposited with the authorities as a goodwill gesture, so that on conclusion of the suit, according to the correct determination of the tax due or exempt (as the case may be), the same may be refunded or the remaining balance be paid.

18. For the foregoing reasons, while allowing these appeals, it is held and directed as under:-

- (1)
- (2)
- (3)
- (4)
- (5)
- (6)
- (7) the suits, which are already pending or shall be filed in future, must only be continued/entertained on the condition that a minimum of 50% of the tax calculated by the tax authorities is deposited with the authorities.”

Learned counsel for the Defendant No.2 submits that no further order in the suit can be passed, nor can the interim order continue until the Plaintiff meets the condition of deposit of 50% of the disputed amount with the department as directed by the Supreme Court in *Searle IV Solution*. On the other hand, learned counsel for the Plaintiff submits that one of the pleas in the suit is that most of the impugned show-cause notices (not all) are unconstitutional, in that a learned Division Bench of this Court in the case of *Pakistan International Freight Forwarders Association v. Province of Sindh* (2017 PTD 1) has declared that the levy of tax on services (except tax on fares and freight of carriers) under the Federal Excise Act, 2005 is unconstitutional after 01-07-2011 when the Sindh Sales Tax on Services Act, 2011 had been enacted. Therefore, learned counsel for the Plaintiff submits that where the plea in the suit is that the impugned notices are unconstitutional, the condition of deposit placed by *Searle IV Solution* is not attracted. He further submits that though the judgment in *Freight Forwarders Association* (2017 PTD 1) is presently suspended by the Hon'ble Supreme Court, it is nonetheless precedent for the point of law decided.

The argument of learned counsel for the Plaintiff is essentially to say that in view of the case of *Freight Forwarders Association* (2017 PTD 1), the impugned show-cause notices issued under the Federal Excise Act, 2005 for the period after 01-07-2011 were without jurisdiction. While that may be an argument to circumvent the special *fora* provided under the Federal Excise Act, 2005 and to maintain a suit, I do not see how that avoids the condition of deposit required of *Searle IV Solution*, which, in my view, is a condition to seeking injunctive relief against tax proceedings by invoking the jurisdiction of the High Court of Sindh at Karachi by way of a suit. While there may be suits to which said condition may not attract, this is not one of those suits especially when the impugned show-cause notices set-out the amount of duty allegedly evaded. Therefore, the Plaintiff is given seven (7) working days starting tomorrow to deposit 50% of the amount mentioned in the impugned show-cause notices with the department, failing which, in the very least, the prayer for injunction along

with the listed application will be dismissed. To be fixed within two weeks. Interim order to continue till then.

JUDGE