

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
C. P. NO. D-6192 to 6194 / 2018

Date Order with signature of Judge

For orders as to maintainability of Petition.

04.03.2021.

Mr. Mansoor Usman Awan Advocate for Petitioner.
Mr. Jawad Dero Additional Advocate General Sindh.
M/s. Abid S. Zuberi, Habibullah Masood and Umair Nabi
Advocates for Respondent No. 2.
Mr. Shamshad Ahmed Narejo Advocate for SRB.
Mr. S. Zainul Abidin Shah DC SRB.

These Petitions have been filed impugning separate Show Cause Notice(s) issued by Sindh Revenue Board (SRB) and on the very first date of hearing i.e. 31.08.2018 while issuing notices to the Respondents the following order was passed:-

- “1. Granted.
2. Granted subject to exceptions.

3 & 4. Briefly, the facts, as stated by the learned Counsel for the Petitioner, are that earlier the Petitioner had filed a Suit No. 747/2018 against issuance of Show Cause Notice by the SRB before the learned Single Judge of this Court, which, according to learned Counsel for the petitioner, has been withdrawn unconditionally, however, with the permission to file appropriate proceedings before the proper forum in view of recent judgment of the Hon'ble Supreme Court in Civil appeal No. 1171/2017 in the case of Searle IV Solution (Pvt) Limited v. Federation of Pakistan and others, whereby, according to learned Counsel for the Petitioner, the Hon'ble Supreme Court has been pleased to hold that suit before the learned Single Judge of this Court would be maintainable subject to deposit of 50% of the amount of tax calculated by the Tax Authorities. Whereas, according to learned Counsel, Petitioner is not in a position to deposit such disputed amount before the Tax Authorities, hence, did not pursue the Suit and has filed instant Petition as, according to learned Counsel for the Petitioner, there is no other efficacious alternate remedy available to the Petitioner against the impugned Show Cause Notice and proceedings initiated by the Respondent against Petitioner. Attention of learned Counsel for the Petitioner was drawn to Paras 17 & 18 of the judgment of the Hon'ble Supreme Court, as referred to hereinabove, which reflects the clear intention of the Hon'ble Supreme Court regarding maintainability of suit, which has been subjected to deposit of 50% of the amount of tax calculated by the Tax Authorities in fresh cases as well as in cases which were already pending before the learned Single Judge of this Court. Admittedly, Petitioner's Suit was also pending before the learned Single Judge of this Court, which has now been withdrawn by the Petitioner in view of the directions

of the Hon'ble Supreme Court relating to deposit of 50% of the disputed amount as calculated by Tax Authorities. We are of the tentative view that such modus operandi of a taxpayer amounts to frustrating the compliance of the order passed by the Hon'ble Supreme Court in respect of pending Suits as well, requiring a taxpayer to deposit 50% of the disputed amount of tax calculated by the Tax Authorities. Whereas, the remedy already availed by the Petitioner against the same Show Cause Notice, which has been impugned through instant constitution petition, by filing a suit, has now been conveniently abandoned, and petitioner has not chosen to invoke the extra ordinary constitutional jurisdiction of this Court, which under the circumstances, does not appear to be either efficacious not satisfy the test for seeking a discretionary relief under Article 199 of the Constitution. However, we would issue pre-admission notice to the respondents as well as to the DAG for 11.09.2018, subject to maintainability of instant petition, to be served through first three modes, when comments, if any, shall be filed with advance copy to learned Counsel for the Petitioner. In the meanwhile, the respondents shall conduct themselves strictly in accordance with law and before passing any adverse orders, complete opportunity of being heard shall be provided to the Petitioner.

To come up along with C. P. No. D-6152/2018.”

Thereafter, on 18.09.2018 all these three Petitions were fixed along with number of other Petitions involving the same issue and a common order was again passed in the following terms:-

“In response to a query of this Court as to maintainability of instant Petition, which appears to have been filed after seeking withdrawal of the Suits which were earlier filed by the Petitioners seeking similar relief in view of the recent judgment of the Hon'ble Supreme Court in **Civil Appeal No. 1171 of 2013** along with others in the case of **Searle IV Solution (Pvt.) Ltd and others V. Federation of Pakistan and others**, whereby, the Hon'ble Supreme Court has been pleased to hold that in tax matters suits are maintainable before the learned Single Judge of this Court exercising Original Civil Jurisdiction, however, subject to deposit of 50% of the disputed amount of tax before the Tax Authorities, learned Counsel for the Petitioners have submitted that an aggrieved party is at liberty to seek remedy against any adverse order, action or inaction of the Tax Authorities, as may be available in law, therefore, Petitioners have approached this Court for seeking Redressal of their grievance while invoking the constitutional jurisdiction of this Court under Article 199. It has been further contended by the learned counsel for the Petitioners that there is no bar provided either under the Constitution or in any other law, which may prevent an aggrieved party from approaching the forum of their own choice. Learned Counsel further argued that the condition of depositing the 50% of disputed amount of tax, as imposed by the Hon'ble Supreme Court in the aforesaid Civil appeal, will apply only to the suits earlier filed before the learned Single Judge of this Court at Original Civil Jurisdiction, and has no bearing on these petitions, whereas, such suits have already been withdrawn by the petitioners. It has been further contended by learned counsel for the Petitioners that against the judgment of the Hon'ble Supreme Court, as referred to hereinabove, Review has also been filed, hearing of which, has been fixed on 26.09.2018, therefore, requested that till then, interim relief may be granted to the Petitioners in the instant Petitions and Respondents may be restrained from taking any adverse action till instant Petitions are finally decide.

We are not convinced with the submissions made by learned Counsel for the Petitioners with regard to maintainability of instant petitions under the above peculiar

facts and circumstances, whereas, we are of the tentative view that instead of complying with the directions of the Hon'ble Supreme Court in the aforesaid Civil Appeal, and depositing the 50% of disputed amount of tax before the Tax Authorities, Petitioners have chosen to abandon such forum, and in order to frustrate the directions of the Hon'ble Supreme Court, have withdrawn the Suits, and filed instant Petitions, seeking similar relief. It may be further observed that constitutional jurisdiction of this Court under Article 199 is discretionary in nature, and can be invoked in exceptional cases seeking enforcement of fundamental rights guaranteed under the Constitution, or against violation of principles of natural justice and, further, where an aggrieved party can demonstrate that any order, decision, action or inaction on the part of the same is patently illegal and unlawful, and there is no alternate and efficacious remedy available for Redressal of such grievance. Such aggrieved persons are further required to show that they have approached the Court promptly and with clean hands, whereas, in the instant cases, keeping in view the fact that before filing instant Petitions Petitioners already availed a remedy of their own choice by filing a suit, however, when required to deposit 50% of the disputed amount of tax / duty, etc. pursuant to Hon'ble Supreme Court's order in the above Civil Appeals, have abandoned such forum, we are of the tentative view that Petitioners could not make out a case for seeking a discretionary relief from this Court, hence, still required to satisfy this Court as to maintainability of instant petitions. However, since a review has been filed by the Petitioners before the Hon'ble Supreme Court, it will be appropriate that before drawing any adverse inference, we may adjourn this matter for a date after 26.09.2018 when the learned Counsel for the Petitioners may satisfy this Court as to maintainability of instant petitions. Whereas, the Petitioners may be at liberty to seek clarification from the Hon'ble Supreme Court with regard to the effect and implication of the judgment passed by the Hon'ble Supreme Court in the above Civil Appeals, if so advised.

To come up on 02.10.2018. In the meanwhile, comments / objections, if any, shall be filed by the Respondents with advance copy to the learned Counsel for the Petitioners, whereas, it is expected that Respondents shall conduct themselves strictly in accordance with law and before proceeding against the Petitioners proper opportunity of being heard may be provided to the Petitioners, and pendency of instant petitions may also be taken into consideration.”

On 14.01.2021 and thereafter, these Petitions were being fixed along with C. P. No. D-7527/2018 and on 28.01.2021 Counsel for the Petitioner had made his submissions in that Petition. Subsequently, on 17.02.2021 learned Counsel appearing on behalf of SRB in C. P. No. D-6192/2018 referred to the above two orders and to the fact that these very Petitions have been entertained with specific objections as to maintainability, whereas, there are no restraining orders as such which could be an impediment in finally deciding and adjudicating the impugned Show Cause Notices. However, according to him on its own and in respect of the orders passed by this Court as above, SRB has not finally passed any orders pursuant to the Show Cause Notices, whereas,

subsequently, the Petitioner filed another petition bearing CP No.7527/2018 and obtained some restraining order without disclosure of complete facts. While confronted, learned Counsel for the Petitioner has though made an effort to take us to the merits of the case; however, after going through the above orders, we are not inclined to entertain these Petitions any further, and on merits, inasmuch as since inception there are no restraining orders in favour of the Petitioner, whereas, in our considered view, the proceedings ought to have been finalized by SRB but for one reason or the other, and for the fact that these Petitions were being fixed along with C. P. No. D-7527/2018 filed subsequently by the same Petitioner, wherein, specific restraining orders were operating, the matters could not be decided.

Accordingly, in our considered view, these Petitions are not maintainable for the above reason as noted in orders dated 31.08.2018 and 18.09.2018 and for the fact that Show Cause Notice had been impugned, whereas, the Petitioner had failed to obtain any ad-interim orders for restraining SRB from finally deciding the matter, all these Petitions are dismissed; however, SRB shall abide by the directions to conduct themselves in accordance with law and provide opportunity of hearing to the Petitioners.

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