

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
SUIT NO. 675 / 2016

DATE	ORDER WITH SIGNATURE OF JUDGE
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- 1) For Ex-parte orders against Defendants.
- 2) For hearing of CMA No. 4230/2016.

03.09.2018.

Mr. Ayan Mustafa Memon Advocate for Plaintiff.
Mr. Umar Zad Gul Kakar DAG.
Mr. Suneel Talreja AAG.
Mr. Irshad Ahmed Advocate for SRB.
Mr. Ayaz Sarwar Jamali Advocate for SRB.
Mr. Zainul Abidin DC SRB.

1 & 2) In response to the notice issued by the office for deposit of 50% of the dispute amount as directed by the Hon'ble Supreme Court vide Judgment dated 27.06.2018 passed in Civil Appeal No. 1171/2017 and other connected matters, learned Counsel for the Plaintiff submits that in the impugned Show Cause Notice there is no demand raised as such by the Department and therefore, the said condition does not apply. He further submits that even otherwise, the Plaintiff has impugned and challenged vires of various provisions of the Sindh Sales Tax on Services Act, 2011 (Act of 2011) as the Plaintiff is not engaged in any taxable services of catering as alleged, and is only selling fruit juices, therefore, is not liable to pay any tax on services.

On the other hand, Counsel for Sindh Revenue Board submits that it was only a letter calling documents which has not been responded by the Plaintiff and therefore, impugned Show Cause Notice has been issued for imposition of penalty which has been challenged through instant Suit and restraining order has been obtained.

I have heard both the learned Counsel and perused the record. Though there is no amount specified in the impugned Show Cause Notice; however, the question that whether in this given situation the Suit would be maintainable or not will be taken up as an issue at the time of settlement of issues and the objection of maintainability is deferred for the time being.

Whereas, on perusal of the impugned Show Cause Notice, it appears that prior to this the Department had issued a letter dated 4.1.2016 to produce certain documents in exercise of the powers conferred under Section 52 of the Act, 2011 as the Plaintiff is filing NIL return with Sindh Revenue Board, and upon their failure to respond impugned Show Cause Notice has been issued as to why penalty shall not be levied for noncompliance of the Act *ibid*.

In view of the above facts and circumstances of this case, I am of the view that Plaintiff should respond to the notice of the Department as well as letter dated 4.1.2016 regarding production of documents as they are registered with Sindh Revenue Board and filing NIL return. It is needless to observe that a taxpayer is obligated in law to comply with the requirement of law, including production of documents, whereas, mere issuance of such notice is not an adverse order as it does not affect the rights if any, of the taxpayer.

Accordingly, listed application bearing CMA No. 4230/2016 stands disposed of by directing the Plaintiff to respond to the notices and Show Cause Notice issued by the Department i.e. Sindh Revenue Board within 15 days from today and upon furnishing of such requisite documents, the Department shall proceed strictly in accordance with law and shall provide opportunity of personal hearing to the Plaintiff. If

any adverse order is passed, the Plaintiff shall be at liberty to seek appropriate remedy in accordance with law.

Insofar as the challenge to the vires of various provisions of the Act of 2011 is concerned, the Plaintiff shall file appropriate legal issues on the next date.

Application stands disposed of.

J U D G E

ARSHAD/