

THE HIGH COURT OF SINDH, KARACHI

Before:

Mr. Justice Adnan Iqbal Chaudhry.

- Suit No.2121 of 2021 : Munib Abdul Rauf Jangda versus Federation of Pakistan and two [02] others.
- Suit No.126 of 2022 : Rizwan Rais versus Federation of Pakistan and three [03] others.
- For the Plaintiffs : Mr. Ajeet Sunder, Advocate, in both the suits.
- For the Defendants : M/s. Ameer Buksh Metlo, Imran Ali Metlo, Muhammad Bilal Bhatti Advocates and Bilal Khilji, Assistant Attorney General for Pakistan.
- Date of hearing : 18-04-2022
- Date of decision : 18-04-2022

JUDGMENT

Adnan Iqbal Chaudhry J. - The Plaintiff in Suit No.2121/2021 has challenged notice dated 22-09-2021 issued by the Commissioner Inland Revenue under section 25 of the Sales Tax Act, 1990 whereby the Plaintiff was selected for audit as follows:

"Your case has been examined and found fit to be proceeded for audit of your Sales Tax affairs under section 25 of the Sales Tax Act 1990 for the subject period. Therefore, in exercise of powers conferred upon me under section 25 of the Sales Tax Act 1990, you are hereby called upon to produce all books of accounts and other relevant record. The concerned Officer of Inland Revenue shall soon be in correspondence with you in this connection."

2. The Plaintiff in Suit No.126/2022 has also challenged notice dated 14-10-2020 issued by the Commissioner Inland Revenue under section 25 of the Sales Tax Act, 1990 whereby the Plaintiff was selected for audit, followed by a notice dated 24-12-2021 issued by the Assistant Commissioner to revive the audit. The selection for audit was as follows:

"Through instant correspondence, it is brought to your knowledge that your case has been selected for audit of your Sales Tax affairs, in terms of section 25 of the Sales Tax Act, 1990."

02. Therefore, in exercise of powers vested to undersigned by virtue of section 25 of the Sales Tax Act, 1990, you are hereby requested to produce the record maintained under the relevant provisions and the rules made-there-under of Sales Tax Act, 1990 including your books of accounts of the above tax period so that the audit of your sales tax affairs of your business may be initiated and processed in accordance with law”.

3. The central issue involved in these suits is whether under section 25 of the Sales Tax Act, 1990 the Commissioner can select a taxpayer for the purposes of conducting audit without assigning any reasons ? The said issue has been answered in the negative by single Benches of this Court in various suits, and more recently also by learned Division Bench of this Court in the case of *Wazir Ali Industries Ltd. versus Federation of Pakistan and others* (C.P. No. D - 4729 of 2021) as under:

“36. Thus, insofar as Section 25 is concerned, we would conclude that for purposes of Section 25(1) Commissioner must frame legitimate mindful queries to the knowledge of a taxpayer after going through the returns which must be either be satisfied after calling the record or otherwise. In case such mindful queries remained unsatisfied, he then was obliged to give reasons under subsection (2) of Section 25 for conducting audit”.

Learned counsel for the Plaintiffs prays that these suits may also be determined in light of the finding above. Given the above, learned counsel for the Defendants do not contest.

4. Therefore, in view of the case of *Wazir Ali Industries*, these suits are decreed as follows:

- (i) It is declared that the impugned notices issued by the Commissioner Inland Revenue to the Plaintiffs under section 25 of the Sales Tax Act, 1990, selecting the Plaintiffs for audit are unlawful for failing to disclose reasons. Whereas, the said notice, so also any subsequent follow-up notices are of no legal effect.
- (ii) The Defendants are restrained from acting upon the impugned audit notices.

Office shall place a copy of this Judgment in the connected suit.

JUDGE

SHABAN*