

# THE HIGH COURT OF SINDH, KARACHI

Before:

Mr. Justice Adnan Iqbal Chaudhry.

## **Suit No. 298 of 2020**

[M/s. Dalda Foods Ltd., versus Federation of Pakistan and another]

Plaintiff : M/s. Dalda Foods Ltd., through Mr. Hanif Faisal Alam, Advocate.

Defendant 1 : Federation of Pakistan through Mr. Bilal Khilji, Assistant Attorney General for Pakistan.

Defendant 2 : Commission, Inland Revenue, Large Taxpayer Unit-II, Zone-IV, Karachi through Mr. Muhammad Aqeel Qureshi, Advocate.

Date of hearing : 18-04-2022

Date of decision : 18-04-2022

## **JUDGMENT**

**Adnan Iqbal Chaudhry J.** - The Plaintiff has challenged notice dated 10-02-2020 issued by the Commissioner Inland Revenue under section 46 of the Federal Excise Act, 2005 read with section 25 of the Sales Tax Act, 1990 whereby the Plaintiff was selected for audit as follows:

“2. This is to inform you that your case has been selected for audit of Federal Excise and Sales Tax affairs by the undersigned in terms of section 46(2) of the Federal Excise Act 2005 read with section 25 of the Sales Tax Act, 1990.

3. In exercise of powers conferred on undersigned under section 68(1) of the Federal Excise Act, 2005 and section 25(2) of the Sales Tax Act, 1990 your records, documents including books of accounts, maintained under the law are required for audit”.

2. The central issue raised by the suit is whether under section 46 of the Federal Excise Act, 2005 and 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 *Indus Motors Co. Ltd. v. Federation of Pakistan* (2020 PTD 297) and *Dewan Sugar Mills Ltd. v. Federation of Pakistan* (Suit No. 850/2020 and others), 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-4729/2021) 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 Plaintiff prays that this suit may also be decreed in light of the findings above. Learned counsel for the Defendants do not contest.

3. Therefore, in view of the case-law noticed above, the suit is decreed as follows:

- (i) It is declared that the impugned notice dated 10-02-2020 issued by the Commissioner Inland Revenue to the Plaintiff under section 46 of the Federal Excise Act, 2005 and section 25 of the Sales Tax Act, 1990, selecting the Plaintiff for audit is unlawful for failing to disclose reasons. 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 notice dated 10-02-2020.

SHABAN\*

**JUDGE**