

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
Suit No.1021 of 2018

DATE

ORDER WITH SIGNATURE OF JUDGE

For hearing of CMA No.7677/18 (U/O 39 Rule 1 & 2 CPC)

15.05.2018

Mr. Ovais Ali Shah, Advocate for Plaintiff.
Dr. Shah Nawaz, Advocate alongwith Zafar Rafique, Commissioner
Inland Revenue and Jaffar Raza Kazmi, Addl. Commissioner Inland
Revenue.
Mr. Umar Zad Gul Kakar, DAG.

Pursuant to issuance of notices, Dr. Shah Nawaz has filed Vakalatnama on behalf of the Department, whereas, learned Commissioner and Additional Commissioner, Inland Revenue are in attendance. It is contended on behalf of the Department that the Plaintiff imports various products, which are chargeable to 3% additional tax at the import stage; but has avoided paying such tax; therefore, impugned Order under Section 21(2) of the Sales Tax Act, 1990 for suspension of Sales Tax Registration has been passed. It is further contended that though independent proceedings have been initiated for short payment, however, due to restraining orders by various Courts in different case, they have not been finalized, hence, impugned order.

Whereas, learned Counsel for the Plaintiff submits that the order in question is without lawful authority and jurisdiction for the reason that, if there is any short levy or short payment, appropriate procedure has to be adopted within the ambit of Sales Tax Act, 1990. He submits that the provisions of Section 21(2) are not to be invoked in such manner as it is harshest of the actions provided whereas, it has crippled the entire business of the Plaintiff as Sales Tax

Registration has been suspended. Resultantly, per learned Counsel, neither any tax can be deposited, nor the imports can be cleared. He has relied upon decision of a learned Single Judge of this Court in the case reported as **2018 PTD 621** (*Messrs Inbox Business Technologies Ltd. Through Chief Investment Officer v. Pakistan through Secretary Revenue Division and 2 others*), who while dealing with identical situation has been pleased to set-aside the suspension order under Section 21(2) of the Sale Tax Act, 1990.

In view of such position, it appears that impugned order has been passed apparently to circumvent the normal procedure of recovery of tax in law, and so also the orders of the Court, and ought not to have been passed in the given facts and circumstances of this case as an extreme action has been taken, therefore, as an interim measure, impugned Order dated 08.05.2018 available at Page 25 passed under Section 21(2) *ibid*, is suspended till the next date of hearing. The Defendants are directed to file their counter affidavit/written statement before the next date.

To come up on 31.05.2018.

J U D G E

Ayaz