

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
CP D 995 of 2023

DATE	ORDER WITH SIGNATURE OF JUDGE
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1. For hearing of CMA No. 4623/2023
2. For hearing of main case

06.04.2023

Mr. Anwar Kashif Mumtaz advocate for the petitioner along with Mr. M. Usman Alam advocate

Mr. Shamshad Ahmed, advocate for respondent/SRB

Qazi Ayazuddin Qureshi, Assistant Attorney General

The petitioner, represented to be a company engaged in the distribution of consumer goods, has assailed a show cause notice dated 02.02.2023 (“Impugned Notice”), whereby the Sindh Revenue Board (“SRB”) has questioned as to why the petitioner should not be compulsorily registered since it is engaged in rendering taxable services, that fall within the ambit of the Sindh Sales Tax on Services Act 2011 (“Act”). While the Impugned Notice explicitly provides an opportunity and forum to the petitioner to state its case, however, the petitioner has elected to abjure the opportunity / forum provided and approach this Court directly.

Petitioner’s learned counsel insists that since the petitioner is already registered with the Federal Board of Revenue (FBR), therefore, the SRB ought to take up the issue, of whether the petitioner is rendering services amenable to tax per the Act or otherwise, with FBR itself and not burden the petitioner in such regard. Contrarily, the Impugned Notice demonstrates that economic activity being carried out by the petitioner falls within the ambit of taxation *inter alia* per tariff heading 9845.0000 of the Second Schedule to the Act. Reliance is also placed on the judgment of this Court in the case of *Mubbashir Traders, SSTRA 06 of 2019*.

The primary question to address by this Court in that of the proper forum, for adjudication of the petitioner’s claim.

A Division Bench of this Court had sieved a myriad of commonwealth authority, in *Dr. Seema Irfan*¹, and maintained that that a show-cause notice may not be justiciable in writ jurisdiction; unless it is manifest *inter alia* that the same suffers from want of jurisdiction; amounts to an abuse of process; and / or is *mala fide*, unjust and / or prejudicial towards the recipient. The judgment in *Dr. Seema Irfan* was followed by another Divisional Bench judgment of this Court dated 04.10.2019 in *K-Electric Limited & Others vs. Federation of Pakistan & Other (CP D 4346 of 2017)*. The Supreme Court also had occasion

¹ Per Muhammad Ali Mazhar J. in *Dr. Seema Irfan & Others vs. Federation of Pakistan & Others* reported as *PLD 2019 Sindh 516*; *Deputy Commissioner Income Tax / Wealth Tax Faisalabad vs. Punjab Beverage Company (Private) Limited* reported as *2007 PTD 1347*.

to consider this question recently in *Jahangir Khan Tareen*² and while maintaining the ratio as aforesaid deprecated the tendency to shun the dispute resolution mechanism provided by statute.

The aforementioned ratio is squarely applicable to the present facts and circumstances. It is pertinent to observe that no case of abuse of process and / or want of jurisdiction is manifest before us. Furthermore, no case has been made out before us to consider the Impugned Notice to be mala fide, unjust and / or prejudicial towards the petitioner.

In view hereof, it is our considered view that the Impugned Notice merits no interference in the exercise of discretionary³ writ jurisdiction of this Court, hence, this petition and listed application/s are hereby dismissed.

The petitioner remains at liberty to place its case, including without limitation the grounds taken herein, before the forum denoted vide the Impugned Notice. The respondent is expected to conduct the proceedings, envisaged vide the Impugned Notice, expeditiously and conclude the same vide a reasoned speaking order. The petitioner shall remain at liberty to assail the findings, if aggrieved, before the forum of appropriate jurisdiction.

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² Per Muhammad Ali Mazhar J. in *CIR vs. Jahangir Khan Tareen* reported as 2022 SCMR 92.

³ Per Ijaz Ul Ahsan J. in *Syed Iqbal Hussain Shah Gillani vs. PBC & Others* reported as 2021 SCMR 425; *Muhammad Fiaz Khan vs. Ajmer Khan & Another* reported as 2010 SCMR 105.