

ORDER SHEET  
**IN THE HIGH COURT OF SINDH AT KARACHI**

Suit No. 196 of 2024 &  
Suit No. 465 of 2024  
Suit No. Nil (Exide Pakistan Ltd v Pakistan & Others)

DATE	ORDER WITH SIGNATURE OF JUDGE
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1. For Orders on Re-Objection (Flag "A")
2. For hearing of CMA No. 3415/24 (U/O 39 Rule 1 & 2 CPC)

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**27.06.2024.**

Mr. Makhdoom Ali Khan along with Mr. Jam Zeshan, Advocate for Plaintiffs  
Mr. Ghulam Asghar Pathan, Syed Ahsan Ali Shah, Mukesh Kumar Khatri, Advocates for Defendants along with Mansoor Wisal, DCIR.  
Mr. Kashif Nazeer, Assistant Attorney General.

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Mr. Ameer Nausherwan Adil, Advocate has filed Vakalatnama on behalf of Respondent No.5, which is taken on record.

On the last date of hearing the following order was passed.

"This is a Civil Suit under Section 9 CPC filed against the Tax Department. The Hon'ble Supreme Court in a case reported as **Searle IV Solution (Pvt.) Ltd and others V. Federation of Pakistan and others (2018 S C M R 1444)** has been pleased to observe that though a Civil Suit on the original side of this Court is maintainable, however, with certain conditions. It has been observed in the concluding Para(s) 17 & 18 as under:-

"17. Keeping in view the alarming allegations made above, it is directed, that while the Single Bench of the Sindh High Court at Karachi may still take cognizance of any suit arising out of an action/order of the tax authorities/Customs Officers, such jurisdiction must be sparingly exercised by the Single Bench and the suits must be expeditiously decided within the period of one year or less so that these suits are not used by aggrieved parties as a means to deprive the Public Exchequer of the taxes due for years on the basis of interim injunctions. Furthermore, as a guiding principle, to bring some certainty and uniformity in the treatment of such suits, the suits filed and those that have already been filed must only be entertained on the condition that a minimum of 50% of the tax calculated by the tax authorities is deposited with the authorities as a goodwill gesture, so that on conclusion of the suit, according to the correct determination of the tax due or exempt (as the case may be), the same may be refunded or the remaining balance be paid.

18. For the foregoing reasons, while allowing these appeals, it is held and directed as under:-

(1) the adverse orders/actions by the Assessment Officer/Customs authorities cannot be said to be beyond jurisdiction and thus fail to circumvent the bar to jurisdiction of civil courts imposed under Section

217(2) of the Customs Act;

(2) the Single Bench of the Sindh High Court, regardless of what jurisdiction it exercises, is a "High Court" and will always remain a High Court because it is a constitutional Court and is not a District Court.

(3) Section 217(2) *ibid* only bars the cognizance of suit(s) filed under the civil jurisdiction exercised by the civil courts, and this bar cannot be extended to include the exercise of the same jurisdiction by the Single Bench of the Sindh High Court at Karachi;

(4) allowing such special jurisdiction to the Sindh High Court, while the same is not available to other Provinces, does not violate the provision of Article 25 of the Constitution;

(5) the suits of the appellants filed before the Single Bench of the Sindh High Court at Karachi are maintainable;

(6) despite the fact that the Single Bench of the Sindh High Court at Karachi can take cognizance of any suit arising out of an action/order of the tax authorities/Customs Officers, such jurisdiction must be sparingly exercised and the suits must be expeditiously decided within the period of one year or less; and

**(7) the suits, which are already pending or shall be filed in future, must only be continued/entertained on the condition that a minimum of 50% of the tax calculated by the tax authorities is deposited with the authorities."**

In view of such position, the Plaintiffs are directed to deposit 50% of the amount being claimed by the Department within three days from today and after deposit of the same with the Tax Authorities, the receipt to that effect be placed on record through statement. If the deposit is not made, the Suits stand dismissed as not maintainable. Office is also directed to explain as to why at the time of institution of these Suits, no objection was raised in view of the judgment of Honourable Supreme Court in the cases of **Searle** (*supra*).

To come up on **27.06.2024** at **09:30** A.M. for compliance. Office to place copy of this order in the connected Suits as above."

Today, it is informed that no compliance has been made; however, learned Counsel for the Plaintiffs has contended that since no amount has been mentioned in the impugned notices by the tax authorities; therefore, Paragraph-18(7) of the judgment passed in the case of **Searle IV Solution** (*supra*) will not apply. In support he has relied upon Para 28 of judgment passed in the case of **Agha Steel Industries Ltd<sup>1</sup>** and **A&Z Agro Industries (Pvt.) Ltd<sup>2</sup>**.

Heard Counsel for the Plaintiffs and perused the record. Admittedly no compliance has been made as to Order passed on 20.06.2024 for deposit of 50% of the disputed amount;

<sup>1</sup> Agha Steel Industries Ltd. Vs. Directorate of Intelligence (2019 PTD 2119)

<sup>2</sup> unreported judgment of this Court dated 13.09.2021 in Suit No. 2019/2015 (A&Z Agro Industries (Pvt.) Ltd. V. Federation of Pakistan and others).

whereas, through these Suits, the Plaintiffs have impugned Notices to give evidence under Section 37 of the Sales Tax Act, 1990, dated 02.01.2024 & 19.07.2023, whereby, it has been alleged that the Plaintiffs are liable to pay an amount of Rs. 14,296,657/- (in Suit No. 196/2024) and Rs.58,345,939/- (in Suit No.465/2024). The contention of the Plaintiffs' Counsel that no amount is mentioned in the impugned notices, and even if so, it is not against the Plaintiff but against some other person who is being investigated by the Defendants, does not appear to be correct and justified from perusal of the record. In the impugned notice it is stated that the Plaintiff is utilizing fake/flying invoices issued by the person under investigation to inflate the input tax and or to reduce its liability, illegally. This is sufficient for the purposes of Para 18(7) of the Supreme Court Judgment as above as otherwise it would negate the intent / dicta laid down by the Honourable Supreme Court in the case of **Searle IV Solution** (supra). As to reliance on Para 28 of judgment in Agha Steel (Supra), it would suffice to observe that in that case the impugned notice was in respect of an alleged illegal raid and the amount claimed was brought to the notice of the Court by way of written statement. It was never a part of the impugned notice. Moreover, the proceedings under Section 175 of the Income Tax Ordinance, 2001, and Section 37 of the Sales Tax Act, 1990, have no similarity and relevance; hence, the observations in the said judgment are distinguishable and of no help to the case of the Plaintiffs.

Moreover, in Para 17 of the judgments as above, it has been observed that "it is directed, that while the Single Bench of the Sindh High Court at Karachi may still take cognizance of any suit arising out of an action/order of the tax authorities/Customs Officers, *such jurisdiction must be sparingly exercised by the Single Bench.*" therefore, in view of such position this Court is not required to mandatorily exercise such jurisdiction in tax matters on the Original Side of this Court in terms of Section 9 CPC read with Section 7 of the Civil Courts Ordinance, 1962. When the matter

is of exercising discretion by the Court, then the Court is not bound to grant such relief merely for the reason that it is otherwise lawful to do so.

Insofar as the third Suit No. Nil (Exide Pakistan Limited v Pakistan) is concerned, though in that case, no amount is mentioned in impugned notice; however, besides this, even otherwise, if at all a Suit is maintainable, even then a direct challenge to a Summon issued under Section 37 of the Sales Tax Act, 1990, without responding to such summons, cannot be entertained at this stage of the proceedings. The impugned notice only seeks a response from the Plaintiff and to produce the relevant documents in support of the input tax so claimed and that is all. It has also provided a date of hearing to respond to such notice along with submission of documents. Therefore, it is premature for the Plaintiff to approach this Court directly without any justifiable cause of action to file this Suit.

Lastly, the notice under Section 37 *ibid* is in respect of some investigation regarding an FIR lodged before the Special Judge (Custom, Taxation & Anti-Smuggling). Though presently the Plaintiff is not nominated in the FIR; however, by way of exercise of jurisdiction in the matter, such investigation has been stalled by the *ad-interim* order of this Court. Such proceedings are criminal proceedings and cannot be stayed, as such an injunctive relief is barred under the law<sup>3</sup>.

Accordingly, in view of the above, and the failure to deposit the requisite 50% of the amount so mentioned in the notice; the relief otherwise being barred in law, the Suits are liable to be dismissed, whereas, in the alternative, this Court is required to exercise its jurisdiction sparingly and not mandatorily in view of Para 17 of the judgment cited above. Accordingly, listed Suits are hereby dismissed with all pending applications. Office to place copy of this order in the connected Suit as above.

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<sup>3</sup> See Section 56(e) of the Specific Relief Act, 1877

JUDGE

Avaz P.S.