

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
SUIT NO. 606 / 2024

Date

Order with signature of Judge

- 1) For hearing of CMA No. 8931/2024.
- 2) For orders on Re-objection at flag "A".

27.06.2024.

Mr. Danial Muzaffar, Advocate for Plaintiff.
Mr. Kashif Nazeer, Assistant Attorney General.
Mr. Zulfiqar Ali Khan Jillani, Advocate for Respondent.

Through this Suit, the Plaintiff has impugned suspension of Sales Tax Registration, and on 31.05.2024 an ad-interim order was passed whereby, the Sales Tax Registration was restored. Today, Plaintiff's Counsel has been confronted as to availing alternate remedy in the matter inasmuch as before suspension of the Sales Tax Registration a pre-suspension notice in compliance of the Judgment passed by this Court in the ***Saleem Ahmed V. Federation of Pakistan (2021 PTD 1813)***, was issued on 23.04.2024 and in response he submits that despite this issuance of pre-suspension notice no opportunity was provided. However, this contention appears to be misconceived as the requirement of law and the dicta laid down by this Court has been complied with, whereas, the Petitioner ought to have availed further remedy in accordance with law including but not limited to Section 46 of the Sales Tax Act, 1990.

Even otherwise, in view of Para 17 of the judgment passed by the Hon'ble Supreme Court in ***Searle IV Solution (Pvt.) Ltd and others V. Federation of Pakistan and others (2018 S C M R 1444)***, this Court has to exercise the original side jurisdiction sparingly and with caution. Para 17 of the said Judgment reads 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.

It has been observed by the Supreme Court 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. Such observation being binding has to be followed and the jurisdiction vested in this Court specially in tax / revenue matters is not to be exercised in every run-of-the-mill case.

In view of hereinabove facts and circumstances of this case, the Plaintiff ought to have availed the alternate remedy, whereas, even otherwise, this Court must not exercise its jurisdiction mandatorily; hence, the Suit being not maintainable and misconceived is hereby dismissed with all pending applications.

J U D G E

Arshad/