

IN THE HIGH COURT OF SINDH, KARACHI
C. P. No. D-4058 of 2022

Date

Order with signature of Judge

Present: *Mr. Justice Muhammad Junaid Ghaffar*
Mr. Justice Zulfiqar Ahmed Khan

Petitioner:

**Al Ghazi Tractors Limited.
Through M/s. Hussain Ali
Almani, Furqan Mushtaq, Sami-
ur-Rehman Khan & Alqamah
Bin Mehmood, Advocates.**

Respondents:

**Pakistan & Others.
Through Mr. Munawar Ali
Memon, Advocate.

Mr. Qazi Ayazuddin Qureshi,
Assistant Attorney General.**

Date of hearing:

06.12.2023.

Date of Order:

12.02.2024.

ORDER

Muhammad Junaid Ghaffar, J: Through this Petition,
the Petitioner has sought the following prayers: -

- "i) Declare that the Impugned SRO, and in particular Rules 390, 39P, 39Q, 39R(d), 39S, 39V and 39W are illegal and ultra vires the 1990 Act;
- ii) Declare that the Impugned Letter is unlawful and liable to be set aside;
- iii) Direct the Respondents not to take any adverse action against the Petitioner on the basis of the Impugned Letter and impugned SRO, including but not limited to rejecting any of the Petitioner's pending refund claim during the pendency of this Petition;
- iv) Direct the Respondents to process all the refund claims of the Petitioner in accordance with the 2012 Rules or, in the alternative, to process all of the refund claims of the Petitioner relating to period prior to the issuance of the Impugned SRO in accordance with the 2012 Rules;
- v) Grant costs;
- vi) Grant such other relief as the Hon'ble Court may deem appropriate in the facts and circumstances of this case."

2. The Petitioner has directly invoked Constitutional jurisdiction of this Court under Article 199 of the Constitution impugning letter dated 16.5.2022 issued by Respondent No.5, whereby, certain documents have been called for processing refund claims of the Petitioner. On 18.10.2023 this Court was pleased to pass the following order whereby, the Petitioner's Counsel was confronted as to maintainability of this Petition.

"18.10.2023.

Learned counsel for the petitioner has referred to the order dated 27.09.2023 and submits that since the case of the petitioner is fully covered by the judgment passed by Division Bench of Lahore High Court, Lahore, in ICA No. 83099/2022 (*Millat Tractors Limited v. Federal Board of Revenue & others*), therefore, instant petition may also be allowed in the same terms.

Learned counsel for the Respondents submits that unless the petitioner satisfy this Court as to maintainability of instant petition, which according to learned counsel for the Respondents is not maintainable in view of the judgment of Hon'ble Supreme Court of Pakistan in the case of *Commissioner Inland Revenue & others Jahangir Khan Tareen & others*, reported in 2022 SCMR 92 as well as unreported judgment passed by Hon'ble Supreme Court of Pakistan in CA. No. 2019/2016 and others (*Deputy Commissioner Inland Revenue & Digicom Trading Pvt.) Limited and another*), wherein, it has been held that even if vires of any SRO has been challenged, the matter is to first decided by the Departmental authorities Learned counsel for the Petitioner has disputed such position and submits that reference to the aforesaid judgments is misconceived as the facts of this case are distinguishable, however, requests for time to place on record the judgments of the larger benches of Hon'ble Supreme Court of Pakistan, wherein, it has been decided otherwise.

Learned counsel for the petitioner is directed to come prepared to assist this Court on the maintainability of Instant Petition with the help of case law i.e, judgments of superior Courts for such purpose

To come up on 08.11.2023. Interim order passed earlier to continue till next date of hearing."

3. Today we have heard the learned Counsel for Petitioner on maintainability of the petition. He has contended that since vires of law have been challenged; hence, the Petition is maintainable, whereas, on the same issue the learned Lahore High Court has already decided the matter in favor of the taxpayers and he has relied upon the said Judgment dated 08.03.2023 passed in I.C.A. No. 83099 of 2022 (*Millat Tractors Limited v. Federal Board of Revenue & others*). As to the above

Order of this Court and the order dated 15.09.2022 passed by the Supreme Court in the case of (*Deputy Commissioner Inland Revenue v. Digicom Trading (Pvt.) Ltd. and another*), learned Counsel has contended that in view of various earlier pronouncements¹ of Supreme Court, the said judgment is not applicable and therefore, the objections raised by the Court must be overruled. According to him the Petitioners refund claims are in relation to sales which have already taken place and are a past and closed transaction insofar as fulfillment of requisite formalities and production of documents is concerned, hence, the new S.R.O 563(I)/ 2022 dated 29.4.2022 (“**SRO 563**”). is not applicable to the pending refund claims which are required to be processed in terms of the previous SRO 363(I)/2012 dated 13.04.2012. He has also placed reliance on the cases reported as *Total Parco Pakistan Limited v. Pakistan & another* (**PTCL 2021 CL 576**), *Commissioner Inland Revenue Zone-I, Regional Tax Office, Quetta v. Messrs Hajvairy Steel Industries (Pvt.) Limited, Quetta and another* (**2023 SCMR 681**), *Sindh Revenue Board and others v. Messrs Quick Food Industries (Pvt.) Limited and others* (**2023 SCMR 1776**), *Mian Azam Waheed and 2 others v. The Collector of Customs through Additional Collector of Customs, Karachi* (**2023 SCMR 1247**).

4. It appears that the primary grievance of the Petitioner, notwithstanding the challenge to the vires of certain rules as reflected from the prayer clause as above, is in fact a letter dated 16.05.2022 issued by the Deputy Commissioner, Inland Revenue which reads as under: -

¹ S A Haroon v Collector of Customs (PLD 1959 SC 177); Nawabzada Muhammad Amir Khan v Controller of Estate Duty (PLD 1961 SC 119); Pakistan V Ziauddin (PLD 1962 SC 440); Nagina Silk Mill v Income Tax Officer (PLD 1963 SC 322); Usmania Glass Sheet Factory v Sales Tax Officer (PLD 1971 SC 205); Murree Brewery Co Ltd v Pakistan (PLD 1972 SC 279); Edulgi Dinshaw Limited v Income Tax Officer (PLD 1990 SC 399); Julian Hoshang Dinshaw Trust v Income Tax Officer (1992 SCMR 250); Attock Cement Pakistan Ltd v Collector of Customs (1999 PTD 1892); Commissioner of Income Tax v Eli Lilly Pakistan (Pvt) Ltd (2009 SCMR 1279)

**“GOVERNMENT OF PAKISTAN
OFFICE OF THE DEPUTY COMMISSIONER IR
UNIT-06, Enforcement – I, Large Taxpayers Office
PRC Towers, 32-A, Lalazar, M. T. Khan Road, Karachi.**

No. DCIR/Unit-6/Enf.-I/LTO/2022/

Dated 16.05.2022

The Principal Officer,
M/S. AL-GHAZI TRACTORS LIMITED,

SUBJECT: RELEASE OF OUTSTANDING SALES TAX REFUND.

Please refer your letter vide No. AGTL/FIN/2022/10 dated 25.04.2022 on the subject noted above.

This office has examined your refund claims in the system. In terms of rules prescribed under S.R.O 563 (I)/ 2022 you are requested to provide following documents so that your refund claim can be processed.

- (a), a copy of tax paid and e-filed sales tax return;
- (b), an undertaking affirming the genuineness of refund as per Sales Tax Act, 1990 and relevant rules made thereunder;
- (c), a revolving bank guarantee valid for at least one hundred and twenty days issued by a scheduled bank of an amount not less than the average monthly refund claim during last twelve months and;
- (d) name, CNIC of buyers along with valid proof of land holding, such as agriculture pass book and copy of record of rights of agricultural land duly verified from Provincial Land Revenue Authorities. Ledger of already purchased agricultural tractors against each buyer.

1. In this regard you are requested to please provide the evidence above noted (in original along with photo copies) in respect of every refund claim.

Sd/-
(UMAIR AKBAR SOOMRO)
Deputy Commissioner-IR

The Principal Officer:-
M/s. Al Ghazi Tractor Ltd.
Tractor House, Plot No. 102-B16th East Street,
DHA Phase I, Off. Korangi Road,
Karachi.”

5. From perusal of the aforesaid letter, it appears that it only requires the Petitioner to furnish certain documents for processing their refund claims in terms of the Rules prescribed under S.R.O 563. In fact, the documents asked for at Serial Nos. (a) to (c) are the same as required under the previous SRO 363, whereas, the documents at Serial No.(d) are being asked for pursuant to SRO 563. It is neither a Show Cause

Notice; nor any final order, whereby, the Petitioner could be aggrieved of. At best, it is providing the Petitioner an opportunity to satisfy the concerned Deputy Collector as to the fulfillment and requirements prescribed under S.R.O 563. If according to the Petitioner, S.R.O 563 does not apply to its pending refund claims as they pertain to a period prior to issuance of the said S.R.O, then it will only be a legal question that whether the said S.R.O is applicable in the facts and circumstances as above. It does not require a challenge to the vires of certain rules so as to seek remedy under the Constitutional jurisdiction of this Court directly. Not only this, on 16.09.2022 the Petitioner has sought and managed to get some ad-interim orders, whereby, the Respondents have been restrained from passing any adverse orders. In our considered view, the Petition appears to be premature and has been filed before any actual cause of action has accrued. By mere addition of a prayer clause challenging vires of certain rules, an attempt has been made to argue that this Court has jurisdiction in the matter. On the contrary, in our considered view, the Petitioner ought to have replied to the impugned letter with all legal objections, including an objection as to the very applicability of SRO 563 on pending refund claims and if at all an adverse order was passed by the concerned Deputy Collector rejecting the refund claims, the Petitioner could have availed remedy of Appeal under Section 45B and Section 46 of the Sales Tax Act, and thereafter by way of a Reference Application before this Court under Section 47 *ibid*. The question of law now being agitated as to any retrospective application of S.R.O 563 could have been answered by this Court in its appropriate jurisdiction. We do not see any reason to prematurely interfere in this matter, just for the reason that since vires of certain rules have been challenged, the entire controversy be finally adjudicated in Constitutional jurisdiction. The law obliges courts ought to abstain from deciding larger

questions, if a case could be decided on narrower grounds and that it is ideal for courts to confine determinations to issues pivotal for the determination of a case². Hence, the entire issue so raised in this petition must not necessarily be decided by us in this Constitutional jurisdiction. The argument of the Petitioner's Counsel that judgment in the case of ***Digicom (Supra)*** is not relevant and applicable as there are other judgments of Supreme Court of larger Benches earlier in time taking a contrary view need not be dilated upon in this case as the facts before us do not strictly warrant this and ought to be regarded as left open for future consideration in an appropriate case³. However, we may add that in the case of ***Digicom (Supra)*** the Supreme Court has deprecated the practice of preempting the action intended to be taken by the department by short-circuiting the system, which is squarely applicable in the facts and circumstances of this case.

6. Having said that, it may also be of relevance to observe that for claiming refund, the Petitioner is otherwise required under the Sales Tax Act, 1990 as well as the Rules to fulfill certain requirements which are to be probed into by the concerned Department. In fact, a factual determination is to be made that whether the refund claims are otherwise admissible or not. Only then, this Court will be in a position to answer the legal question including the argument that the impugned Rules notified vide SRO 563 are applicable or not to the Petitioners case.

7. Lastly, as to placing reliance on the judgment of Lahore High Court in *Millat Tractors (Supra)*, the same besides being persuasive and not a binding precedent, it would suffice to observe that even in that case not only a show cause notice

² CP No.8233 of 2019 judgment dated 7.2.2023 passed by this Court following LDA & Others vs. Imrana Tiwana & Others reported as 2015 SCMR 1739.

³ Shahid Gul and Partners v DCIT Peshawar (2021 SCMR 27)

had been issued; but so also an order had been passed by the concerned Deputy Commissioner by holding that the new SRO 563 is applicable. In the instant matter no such finding has been recorded against the present Petitioner; hence, any reliance on the said judgment is of no help.

8. In view of hereinabove facts and circumstances the Petition appears to have been filed prematurely; hence, we are not inclined to exercise any discretion in this matter and therefore, the same is ***dismissed*** as not maintainable. The Petitioner, if so advised, may respond to the impugned letter dated 16.05.2022 by raising all such legal objections as may be available and the concerned Deputy Commissioner / Department shall proceed further, in accordance with law.

Dated: 12.02.2024

J U D G E

J U D G E

Arshad/