

IN THE HIGH COURT OF SINDH, KARACHI
Constitution Petition No. D- 6223 of 2023

Date

Order with signature of Judge

Present: *Mr. Justice Muhammad Junaid Ghaffar*
Mr. Justice Adnan-ul-Karim Memon.

Petitioner:

Nestle Pakistan Limited
Through Mr. Aitazaz Manzoor Memon,
Advocate.

Respondents:

The Province of Sindh & others
Through Mr. Fahad Hussain Areejo.

Date of hearing:

15.01.2024.

Date of Order:

15.01.2024.

ORDER

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

- I) Direct the Respondent No. 3 to decide the Petitioner's Appeal in accordance with law;
- II) Prohibit the Respondents from taking any adverse and/or coercive action against the Petitioner till the Petitioner's Appeal is finally decided by the Respondent No.3 and for a further seven days thereafter in the event of an adverse Appellate Order, which may be calculated from the receipt of the Appellate Order by the Petitioner, so as to enable it to file a statutory appeal and seek interim relief from the Appellate Tribunal within such period.
- III) Grant such other relief as may be deemed necessary in the circumstances of the case.
- IV) Grant costs.

2. Heard learned Counsel for the Petitioner and perused the record. It appears that from the first date of hearing i.e. 21.12.2023, Counsel for the Petitioner was directed to satisfy as to maintainability of this petition, which is filed against an ad-interim order of the Appellate Tribunal Sindh Revenue Board. Thereafter matter was adjourned and once again on 29.12.2023 the Petitioner filed an

urgent application before another Bench and sought a restraining order against the Respondents. Today, Counsel for the Petitioner has been heard on the maintainability of this petition and he has contended that since the Order of the Tribunal is too harsh; whereas, appeal is still pending before the Commissioner Appeals Sindh Revenue Board, the Petitioner is fully justified in invoking the Constitutional jurisdiction under Article 199 of the Constitution. He has also placed reliance on Order dated 24.11.2023 passed in C.P No. D- 5693/2023 available at page-149.

3. It appears that an Order-in-Original has been passed against the Petitioner by the Assistant Commissioner SRB, against which an appeal has been preferred before the Commissioner (Appeals) Sindh Revenue Board, wherein, initially ad-interim stay was granted and the Respondent department was restrained from making any recovery of the impugned amount. It further appears that after passing of the maximum period of 120 days, for which the Commissioner (Appeals) can pass a stay order in terms of Section 58(4) of the Sindh Sales Tax on Services Act, 2011. The Respondent department raised an objection that the Petitioner be directed to deposit 25% of the adjudged amount in terms of Proviso 66(1) of the 2011 Act. The Petitioner instead of making any compliance approached the Appellate Tribunal Sindh Revenue Board at Karachi and filed an appeal, where on 12.12.2023 again ad-interim order was passed and Appellant was directed to deposit 10% of the principle amount within 15 days from such date and recovery proceedings were stayed. The learned Tribunal had in fact

reduced the quantum from 25% to 10%, but still the Petitioner was aggrieved and has filed this petition by making a prayer that Respondents be restrained without asking for any deposit of the disputed amount. Admittedly, the present petition has filed against an ad-interim order of the Tribunal, which per settled law ordinarily is not maintainable. The discretion of the Court while exercising jurisdiction under Article 199 of the Constitution is not to be exercised in every other case as when a Petitioner has come forward with such a petition. It has to be exercised sparingly and more so when the order impugned is interim in nature. Insofar as the present case is concerned, the record does not reflect or support the stance of the Petitioner that any case is made out to exercise such discretion under Article 199 (ibid). Initially the Petitioner was confronted by the Commissioner (Appeals) to come prepared as to why an order may not be passed for deposit of 25% as required under Section 66(1) of the 2011 Act and matter was adjourned to 11.12.2023. In fact at that moment of time, the Petitioner could not have aggrieved in any manner to approach the Tribunal inasmuch as no clear directions were given to deposit or pay 25% of the disputed amount. Not only this, the Tribunal has entertained the appeal and has passed a very reasonable order; whereby, the amount has now been reduced to 10% and a stay has been granted. The Petitioner, instead of making any compliance, has approached this Court and has made an attempt to seek a restraining order without payment or deposit of any percentage of the disputed amount. Such conduct of the Petitioner is not at all appreciable;

whereas, in our considered view, the Tribunal has passed a reasonable order and in fact the impugned order is in favour of the Petitioner and no cause of action arises of being aggrieved from such an order. The Tribunal has exercised its discretion and this Court is not inclined to interfere with such discretion of the learned Tribunal.

4. In view of hereinabove facts and circumstances of this case, it appears that the Petitioner has not only misled the Court; but has also approached it without clean hands, and does not warrant any interference for exercising of discretion under Article 199 of the Constitution. Accordingly, by means of a short order, this petition was dismissed with costs of Rs.25,000/- to be deposited in the account of High Court of Clinic within 15 days failing which CNIC of the Petitioner's authorized representative, through whom instant petition has been filed, shall be blocked by the office and these are the reasons thereof.

J U D G E

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