

IN THE HIGH COURT OF SINDH AT KARACHI

Suit No.1343/2013

Date

Order with signature of Judge

1. For order on CMA No.11890/2013
2. For order on CMA No.11891/2013
3. For order on CMA No.11892/2013

26.10.2013:

Mr. Murtaza Wahab advocate for plaintiff.

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1. Granted.
2. Granted subject to all just exceptions.
3. The plaintiff claims that under SRO No.1(1)/90 dated 01.01.1990 an unlawful tax was imposed on the products of the plaintiff. The plaintiff has challenged the said SRO before this Honourable Court in C.P. No.D-957/1992 which was contested by the defendants upto Honourable Supreme Court through Petition No.264-K and 265-K of 2008 whereby the contention of the plaintiff were sustained and the defendants' plea against the imposition of sales tax at the rate of 12.5% was rejected by the Honourable Supreme Court. Consequently the plaintiff claimed refund of overpayment of sale tax from the defendant and by order dated 30.11.2012 the defendant No.3 refunded a sum of Rs.37,547,789/- as sales tax refund and payment order available at page 143 has clear reference to the judgment of the Honourable High Court of Sindh in C.P. No. D-957/1992. Therefore the counsel for the plaintiff claims that thus refund was given to the plaintiffs on 01.01.2013 as per annexure N/1 at page 153 in

compliance of orders of the Honourable High Court of Sindh are quoted below :-

“SALES TAX REFUND PAYMENT ORDER

THE TREASURY OFFICER,
IC-TOWER, 32-A, LALAZAR, MT KHAN
ROAD, KARACHI.

It is certified that a sum of Rs.37547789/ (Rupees five hundred forty-seven thousand seven hundred eighty-nine only) on account fo Sales Tax Refund has been claimed under section 66 of the Sales Tax Act, 1990 read with Rule 11 of the Sales Tax Refund Rules vide application moved on 01-jan-13, Registration No.0205721300682 NTN No.9340 Bank A/c No.20620-714-130394, Summit Bank, I.I. Chundrigar Road Branch (II), Karachi who are ---

No refund order regarding the sum now being sanctioned has previously been granted.

Please pay to M/S ABBAS STEEL (Pvt) LTD, PLOT NO.8, SECTOR 19, KORANGI, KARACHI a sum of Rs.37547789/- (Rupees five hundred forty-seven thousand seven hundred eighty-nine only) on account of above refund.

i. Refund claimed as per return	:	Rs.37,547,789.00
ii. Input Tax already rejected	:	Rs.00
iii. Input Tax being rejected	:	Rs.00
iv. Input tax deferred	:	Rs.00
v. Amount already sanctioned	:	Rs.00
vi. Amount being sanctioned	:	Rs.37,547,789.00
a. Cheque for claimant	:	Rs.37,547,789.00
vii. Balance amount	:	Rs.00

TARIQ HUSSAIN SHAIKH
Deputy Commissioner Inland Revenue
Refund Sanctioning Authority”

However through the impugned order dated 27.09.2013 annexure “S” at page 207 same respondent No.3 has set aside the High Court and Supreme Court in the following terms:-

“I, therefore, order for recovery of refund amounting to Rs.37,547,789/- which was earlier sanctioned to them along with default surcharge (to be calculated at the time of payment) in terms of section 11(2) and 34 of

the Sales Tax Act, 1990 for the period January 1990 to April 1992. I am also convinced to impose penalty of Rs.1,126,434/- in terms of section 33(19) of the Sales Tax Act, 1990 for violation of Provisions of Sections 7, 8, 22, 23, 66 & 73 *ibid.*”

This order as per counsel for the plaintiff, is negation of the orders of the Honourable High Court and Honourable Supreme Court. The counsel for the plaintiff when confronted with the question that once such order is appealable under section 45-B of the Sales Tax Act 1990 how he has preferred this suit. The first answer from the counsel for the plaintiff is that the Appellate Authority under section 45-B of the Sales Tax Act, has no powers to suspend the orders of respondent No.3. He has also relied on the judgment of the Honourable High Court reported in 1999 PTD page 1313 whereby this Honourable Court has already held that Court has jurisdiction to entertain such suits. Apparently the case of the plaintiff is already covered by two judgments in his favour annexed with the plaint and therefore the plaintiff claims that an amount of Rs.37,547,789/- refunded to him after 23 years on 01.01.2013 has been enjoyed by the defendant right from 1990 when they were forced to pay the said sales tax amount of Rs.37,547,789/- is now again claimed by the defendants through the impugned order and this time with the penalty. More so the defendant No.3 in conclusion of his order himself has referred to the judgment of High Court therefore the plaintiff has *prima facie* case atleast for restraining the defendants to claim recovery of the same amount of Rs.37,547,789/- paid to the plaintiff pursuant to

the judgments of the Honourable High Court and Honourable Supreme Court.

Issue notice to the defendants and DAG. However the defendants are restrained to recover the disputed amount pending the suit subject to furnishing solvent surety equivalent to the amounts claimed to be suspended through this suit, till next date of hearing.

Judge

Imran