

IN THE HIGH COURT OF SINDH AT KARACHI
(Constitutional Jurisdiction)

C.P. No. 3735 of 2016

23-6-16

[Signature]
National Registrar (Writ)

ILC

Hum Network Limited
Plot # 10/11, Hassan Ali Street,
Off. I.I. Chundrigar Road,
Karachi - 74000
Through its duly constituted attorney
Mr. Mohsin Naeem

PETITIONER

Versus

1. Sindh
through the Chief Secretary,
Government of Sindh,
Tughlaq House, Saddar,
Karachi.
2. Sindh Revenue Board,
through its Chairman,
Shaheen Complex, 6th Floor,
M. R. Kiyani Road,
Karachi.
3. Commissioner-IV
Sindh Board of Revenue,
9th Floor, Shaheen Complex,
M.R. Kiyani Road,
Karachi
4. Assistant Commissioner (Unit 21),
Sindh Board of Revenue,
9th Floor, Shaheen Complex,
M.R. Kiyani Road,
Karachi.

RESPONDENTS

PETITION UNDER ARTICLE 199 OF THE
CONSTITUTION OF THE ISLAMIC REPUBLIC OF PAKISTAN, 1973



ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

C.P. No. D-3735 of 2016

Date Order with signature(s) of Judge(s)

For order as to maintainability.

Date: 12.02.2019.

Mr. Muhammad Ali Aziz, Advocate for the Petitioner.
Mr. Ghulam Murtaza Korai, advocate for the petitioner.
Mr. Saifullah, AAG, for the State alongwith Ms. Naheed, advocate.

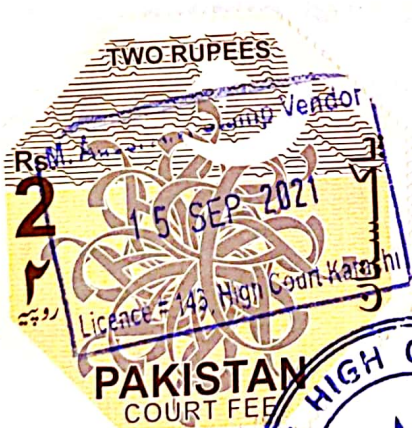
For reasons to be recorded later, instant petition is dismissed along with listed application for being not maintainable. The petitioner may however, be at liberty to raise all such legal and factual grounds before the respondents, including the ground of jurisdiction, which shall be considered and decided by the respondents strictly in accordance with law, whereas, opportunity of being heard shall be provided to the petitioner before passing any adverse order against the petitioner.

Sr Aqeel Ahmed Abbasi

Judge

Sr Abdul Malik Qadi

Judge



IN THE HIGH COURT OF SINDH AT KARACHI



PRESENT:

Mr. Justice Aqeel Ahmed Abbasi
Mr. Justice Abdul Mäalik Gaddi

C. P. No.D-3735 of 2016

Hum Network Limited.....Petitioner

Versus

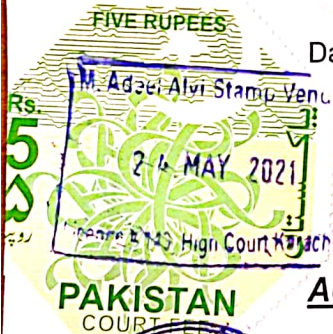
Sindh through Chief Secretary & 3 others.....Respondents

Petitioner : Through Mr. Muhammad Ali Aziz, Advocate
Respondents No.2, 3 & 4 : Through Mr. Ghulam Murtaza Korai, Advocate.
Respondent No.1 : Through Mr. Saifullah, Asst. Advocate-General Sindh alongwith Ms. Naheed, Advocate.
Dates of Hearing : 16.01.2019 & 12.02.2019
Date of Short Order : 12.02.2019

J U D G M E N T

Aqeel Ahmed Abbasi, J : -- Through instant petition, the petitioner, being public limited company operating satellite TV channels engaged in the businesses of production, advertisement, entertainment and media marketing, has impugned a Show Cause Notice issued by the Assistant Commissioner (Unit-21), Sindh Revenue Board, Government of Sindh on 07.05.2016 on the ground that the same is malafide, illegal, void ab initio and has been issued without jurisdiction and lawful authority.

2. Briefly, the facts as stated in the memo of petition are that the petitioner provides services of advertisement on TV channels, whereas, such services are listed as taxable services in the Second Schedule to the



Sindh Sales Tax on Services Act, 2011 against Tariff Heading 9802.1000. Petitioner also provides other advertisement services including those on the web or internet, whereas, such services are taxable under Sindh Sales Tax on Services Act, 2011 and are listed in its Second Schedule against Tariff Heading 9802.9000 with the description other. In addition to hereinabove services, petitioner also provides the taxable services i.e. Event Management Services falling under Tariff Heading 9827.1000, which includes all branding and marketing activities carried out by the petitioner on behalf of its clients. As per statement of facts, petitioner has an Agency Agreement with HUMTV Inc, a company having its office in the United States of America and under such agreement, petitioner has appointed HUMTV Inc as its agent in the United States of America and Canada to, inter alia, enter into agreements on behalf of the petitioner, promote awareness of the petitioner's channels, make payments on the petitioner's behalf and conduct market research studies. The revenue earned by the petitioner from advertisement and subscription services rendered outside Pakistan by the petitioner's foreign subsidiaries is recognized as Subscription Income in the Petitioner's Annual Financial Statements. According to the petitioner, no Sindh Sales Tax on Services is due thereon, as such services are provided beyond the territorial boundaries of Sindh by the petitioner's foreign subsidiaries.

3. With this background, the impugned Show Cause Notice dated 07.05.2016 issued by the respondent No.4 under section 23(2) read with section 23(1A) of the Sindh Sales Tax on Services Act, 2011 for the periods from July 2011 to June 2012, July 2012 to June 2013, July 2013 to June 2014 and July 2014 to June 2015, has been challenged by the petitioner for having been issued without jurisdiction and lawful authority, as according to the learned counsel for petitioner, respondent No.4, who belongs to Unit-21 Commissioner-IV, has no jurisdiction over the case of the petitioner and the authority over "withholding of Sindh Sales Tax Act"



lies with the Assistant Commissioner (Unit-22) and not with Assistant Commissioner (Unit-21) [Respondent No.4] as per Notification No.SRB-3-4/7/2015, dated 6th July 2015. It has been further argued by the learned counsel for the petitioner that in absence of any audit proceedings or inquiry pending against a registered person, impugned notice cannot be issued. While concluding his arguments, learned counsel for the petitioner has submitted that since the impugned notice has been issued without jurisdiction and lawful authority, whereas, petitioner is not liable to pay tax in respect of the advertisement services under Tariff Heading 9802.1000, production house services under Tariff Heading 9832.0000 and franchise services under Tariff Heading 9823.0000, as confronted by the respondent No.4 through impugned Show Cause Notice, therefore, the impugned Show Cause Notice may be set aside and the respondents may be directed to drop all proceedings pursuant to the impugned Show Cause Notice against the petitioner.

4. Conversely, learned counsel for the respondents No.2 to 4, after having filed detailed parawise comments on behalf of the respondents, has vehemently opposed the maintainability of instant petition on the ground that Constitutional Petition is not maintainable against Show Cause Notice issued under Sindh Sales Tax on Services Act, 2011, as the same does not suffer from any jurisdictional defect or patent illegality. According to the learned counsel for respondents, admittedly the petitioner is a registered person, who is making payment of Sindh Sales Tax on different Services being provided by the petitioner under various tariff headings as referred to hereinabove, however, while examining the record, including financial statements filed by the petitioner in the office of the respondent No.4, respondents are of the view that during the relevant period, petitioner has provided "advertisement services" which are taxable under Tariff Heading 9802.1000, "production house services" taxable under Tariff Heading 9832.0000 and "franchise services" taxable under



Tariff Heading 9823.0000, however, the petitioner failed to pay sales tax on such services in accordance with law, therefore, through impugned Show Cause Notice, an opportunity of being heard has been provided to the petitioner to explain its position in this regard. According to the learned counsel for respondents, instead of submitting response to the impugned show cause notice petitioner sought extension of time to submit the reply, which was duly granted, however, instead of several extensions granted to the petitioner to submit reply/response to the impugned Show Cause Notice petitioner has approached this Court under Article 199 of the Constitution of Islamic Republic of Pakistan 1973 with a prayer to set aside the Show Cause Notice. According to the learned counsel for respondents, the tendency to abandon the statutory forums provided under the law, without submitting response to the query made in the show cause notice, has been deprecated by this Court as well as by the Hon'ble Supreme Court in various cases, as it amounts to preempt the decision by the competent authority and also to thwart the lawful proceedings culminating into the assessment order, which is appealable before the Appellate Authorities, including High Court and the Hon'ble Supreme Court for final determination of the legal issue involved in the case. It has been prayed that instant petition is liable to be dismissed in limine, as no Constitutional Petition would lie against issuance of Show Cause Notice, whereupon, an opportunity of being heard has been provided to the taxpayer. In support of his contention, learned counsel for the respondents has placed reliance on the cases of Pakistan Mobile Communications Ltd. v. Sindh Revenue Board and 2 others (2014 PTD 2048) and Messrs Maritime Agency (Pvt.) Ltd. v. Assistant Commissioner-II, SRB and others (2015 PTD 160).



5. We have heard the learned counsel for the parties, perused the record with their assistance and have also examined the case law relied upon by the learned counsel for respondents.

6. From perusal of the impugned Show Cause Notice, it appears that the same does not suffer from any jurisdictional defect or patent illegality, as it has been issued under the relevant provisions of the Sindh Sales Tax on Services Act, 2011 to the petitioner, who is admittedly providing various taxable services and making payments of Sindh Sales Tax in accordance with law. The respondent No.4 i.e. Assistant Commissioner (Unit-21), Sindh Revenue Board, after having examined the financial statements and the relevant records of the petitioner for the aforesaid period, confronted the petitioner regarding chargeability to pay sales tax in respect of "advertisement services" under Tariff Heading 9802.1000, "production house services" under Tariff Heading 9832.0000 and "franchise services" under Tariff Heading 9823.0000, however, the petitioner instead of submitting any response or reply to the impugned show cause notice, sought various adjournments and, thereafter, directly approached this Court while invoking the Constitutional jurisdiction under Article 199 of the Constitution with the prayer to set aside the impugned show cause notice.

7. Learned counsel for the petitioner was directed to assist this Court as to maintainability of instant petition, which appears to have been filed on mere issuance of Show Cause Notice, which *prima facie* does not suffer from any jurisdictional defect or patent illegality, whereas, an opportunity of being heard has been provided to the petitioner to explain his position, however, he could not submit any reasonable explanation and has argued that since the petitioner is not liable to make payment under Sindh Sales Tax on Services Act 2011 in respect of the aforesaid services, therefore, the impugned Show Cause Notice may be declared as illegal and without lawful authority and the same may be set aside while exercising Constitutional jurisdiction under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973.



8. The practice of approaching this Court by filing Constitutional Petition under Article 199 of the Constitution, while abandoning the statutory forums provided for resolution of the dispute and redressal of the grievances by filing an Appeal before the relevant statutory forums provided under the law, has been seriously deprecated through various judgments of this Court as well as by the Hon'ble Supreme Court in large number of cases, as it amounts to frustrate the legal proceedings before the Tax Authorities, who are under legal obligations to pass appropriate order in accordance with law. Moreover, on mere issuance of Show Cause Notice, which *prima facie* does not suffer from any jurisdictional defect or patent illegality Constitutional Petition is not maintainable. Reliance in this context can be placed in the cases of Roche Pakistan Ltd. v. Deputy Commissioner of Income Tax and others [2001 PTD 3090]; Sitara Chemical Industries Ltd. v. Deputy Commissioner of Income Tax [2003 PTD 1285]; Pakistan Mobile Communications Ltd. v. Sindh Revenue Board and 2 others [2014 PTD 2048]; and Messrs Maritime Agency (Pvt.) Ltd. v. Assistant Commissioner-II, SRB and others [2015 PTD 160].

9. In view of hereinabove facts and circumstances of the case, we do not find any substance in the aforesaid response submitted by the learned counsel for the petitioner. We are of the considered view that instant petition is misconceived and not maintainable for having been filed on mere issuance of Show Cause Notice, which *prima facie* does not suffer from any jurisdictional defect or patent illegality, whereas, the objections raised by the petitioner through instant petition can be agitated before the statutory forums while submitting the response/reply to the impugned Show Cause Notice in accordance with law. Accordingly, instant petition was dismissed vide our short order dated 12.02.2019 in the following terms: -



"For reasons to be recorded later, instant petition is dismissed along with listed application for being not maintainable. The petitioner may however, be at liberty to raise all such legal and factual grounds before the respondents, including the ground of jurisdiction, which shall be considered and decided by the respondents strictly in accordance with law, whereas, opportunity of being heard shall be provided to the petitioner before passing any adverse order against the petitioner."

10. These are the reasons of the said short order.



Ullasi
 Sr Ajeel Ahmed Abbasi
 Judge

Sr Abdul Malik Qadri
 Judge

THE HIGH COURT OF SINDH, KARACHI
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