

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

CP No.D-6973 of 2022

Presented on 02/11/22
[Signature]
Additional Registrar (Writ)

Muhammad Tahir
son of Muhammad Bashir
having its place of business at 152
GRW, Garden West
Karachi, thr attorney *Mr. M. Shahid*

Petitioner

versus

1. Federal Board of Revenue
through its Chairman
Ministry of Finance, Revenue Division
Islamabad
2. Commissioner Inland Revenue
Regional Tax Office I, Karachi
Main Income Tax Building
Shahrah-e-Kamal Ataturk
Karachi

Respondents

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

The Petitioner respectfully submits as under:

import and export as a general trader under the



IN THE HIGH COURT OF SINDH AT KARACHI

Constitutional Petition No.D-6773 of 2022
(Muhammad Tahir Vs. Federal Board of Revenue and another)

Present:

Mr. Justice Irfan Saadat Khan
Mr. Justice Zulfiqar Ahmad Khan

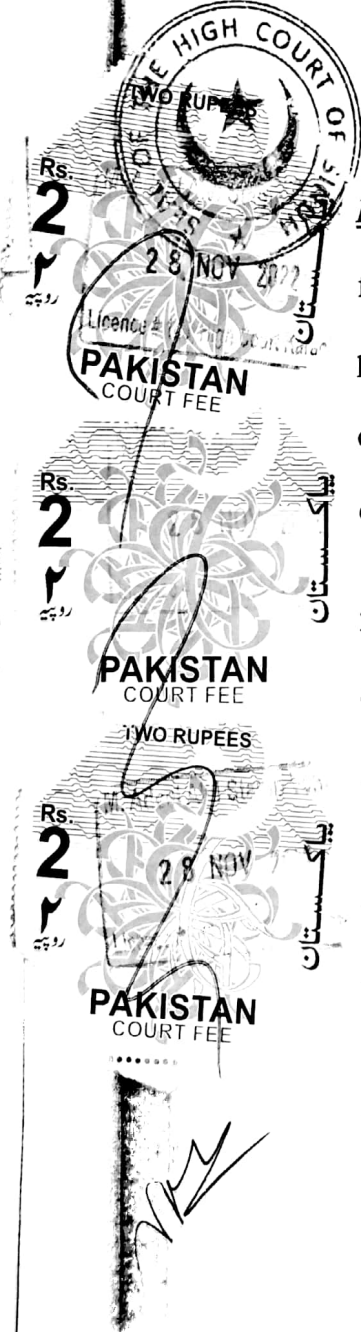
Date of hearing : 22.11.2022.
For the petitioner : Mr. Ahmed Masood Advocate.
For the respondent No.1&2 : None has appeared.
On Court Notice : Mr. G.M. Bhutto, Assistant Attorney General for the Federation of Pakistan (AAG).

JUDGMENT

IRFAN SAADAT KHAN, J. This Constitutional Petition has been filed on the ground that the Sales Tax Registration (STR) of the petitioner was suspended w.e.f. 30.05.2022 without providing any opportunity of hearing and intimating the petitioner with the reasons of suspending the said STR.

2. Briefly stated that the facts of the case are that the petitioner is engaged in import and export, as a general trader, under the name and style 'Tahir Impex' and is duly registered with the Sales Tax Department. However, the STR of the petitioner was suspended w.e.f. 30.05.2022 and in respect of the said suspension the present petition has been filed.

3. Mr. Ahmed Masood Advocate has appeared on behalf of the petitioner and stated that the STR of the petitioner was suspended



w.e.f. 30.05.2022 without intimating the reasons for the same and without giving any opportunity of hearing to the petitioner. He stated that since the action of the respondent /department is wholly illegal and uncalled for, the said STR of the petitioner may be restored. He stated that even in the comments filed by the respondent No.2 it is clear from the annexures attached that the department suspended the STR vide order dated 30.05.2022, from which it is clear that no prior opportunity of hearing to the petitioner was given before passing of this order. He stated that though in the said order reasons for suspending the STR have been given but this exercise should have been done by the respondent after confronting the petitioner with the reasons for suspending the STR and obtaining his reply but the said legal exercise was not carried out and vide order dated 30.05.2022 the department has directly suspended the STR without providing opportunity of hearing to the petitioner. Hence according to the learned counsel the said action of the department is illegal and uncalled for and the STR of the petitioner may be restored. In support of his contention, the counsel has placed reliance on the decision (authored by one of us, namely, Zulfiqar Ahmad Khan J.) given in C.P. No.D-8101 of 2017 and others wherein, according to him, under identical circumstances it was declared that suspension of the Sales Tax Registration without prior notice is ultra vires to the Constitution and violative of principles of natural justice. He, therefore, prayed that the instant petition may be allowed by directing that the STR of the petitioner may be restored immediately.



4. Mr. G.M. Bhutto, AAG has appeared on behalf of the Federation of Pakistan and has supported the comments as filed by the department /respondent No.2.

5. The counsel for the respondent No.2 is called absent; however his comments are available on the record.

6. We have heard the matter at some length and have also perused the record and the decision relied upon by the petitioner's counsel.

7. The record clearly reveals that on 30.05.2022 the order for suspension of the STR has been passed by the respondent No.2. Though in the said order the reasons for suspending the STR have been mentioned but the prime question is 'whether those reasons prior to suspending the STR were ever communicated to the petitioner and whether any opportunity of hearing to the petitioner was provided with regard to the observations recorded in the said order of suspension? In our view, the answer to both these questions is in emphatic 'No'. From the order dated 30.05.2022 it is clear that after noting some shortcomings on the part of the petitioner the said respondent has suspended the STR with immediate effect, which amply proves that prior to the said order of suspension neither the petitioner was communicated with regard to the shortcomings, if any recorded by the respondent No.2, nor any reply was obtained from the petitioner nor any opportunity of hearing was given to the petitioner and an action with immediate effect was taken by the respondent No.2, which cannot be endorsed under the law, as it is a settled proposition of law that no one should be condemned unheard and



before drawing any adverse inference the department was bound to call explanation /reply from the petitioner and in absence of the said mandatory legal requirement the action of the department is non-est in the eyes of law. In the decision relied upon by the petitioner's counsel this Court, while dealing with the petitions, in somewhat similar circumstances, has categorically observed that suspension of STR without prior notice is ultra vires to the Constitution, violative of principles of natural justice and in excess of authority vested under Section 21(2) of the Sales Tax Act, 1990.

8. We, therefore, in view of what has been observed above, are of the considered opinion that the action of the department is wholly illegal and uncalled for and cannot be endorsed. The department, therefore, is directed to restore the STR of the petitioner in accordance with law within ten (10) days from the date of receipt of this order. So far as the issue of blacklisting of the petitioner, as intimated to this Court via comments filed by the department, is concerned, the petitioner may seek his remedy as available to him under the law.

The petition along with the listed application stands disposed of in the above manner.

Dr. Iqbal Saadat Khan
JUDGE

Dr. Gulzar Ahmad Khan
JUDGE
JUDGE

Karachi:
Dated: 25.11.2022.
Tahseen/PA

