

IN THE LAHORE HIGH COURT, LAHORE.

For Private Use

W.P. NO. 159322-78

Enroller
Copy Section
Lahore High Court, Lahore

PRESENT:

MR. JUSTICE Shams Mehmood Mirza

20/4/13

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

PARTY NAME, PRAYER AND ORDER ATTACHED.

TRUE COPY
[Signature] 27-4-13

EX. C.S.S.

ORDER SHEET
IN THE LAHORE HIGH COURT LAHORE
JUDICIAL DEPARTMENT.

W.P.No.159322 of 2018.

Muhammad Nadeem Sohail

VERSUS

Federation of Pakistan etc.

S. No. of order/ proceedings	Date of order/ Proceedings	Order with signatures of Judge, and that of parties of counsel, where necessary
	12.04.2018.	M/s Khawaja Farooq Saeed, Abdullah Akhtar Butt and Shahid Sharif Advocates for petitioner. Mr. Muhammad Asif Advocate for respondent/FBR.

This writ petition calls into question the legality of notice dated 08.01.2018 whereby the petitioner has been selected for audit in terms of section 214-C of Income Tax Ordinance, 2001 (the **Ordinance**).

2. Learned counsel submits that the petitioner is a "retailer" by virtue of Rule 4 of the Sales Tax Special Procedure Rules, 2007 (the **Rules**) and that he is required to pay sales tax under SRO No.1125(I)/2011 dated 31.12.2011 in terms of the proviso to Rule 5 of the Rules. He further referred to sub-section (4) of section 214D of the Ordinance to contend that the petitioner being a retailer under Rule 4 was not liable for audit in terms of section 214C of the Ordinance.

3. Learned counsel for the respondents, on the other hand, submitted that the petitioner was not registered as a retailer with the sales tax department. He furthermore submitted that the petitioner was in fact registered with the sales tax department on 26.12.2012 whereas Rule 4 and Rule 5 were inserted through SRO No.608(I)/2014 dated

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Counsel for Federation of Pakistan etc.
LaHore
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02.07.2014 and as such the petitioner cannot seek benefit of sub-section (4) of section 214D of the Ordinance.

4. Rule 4 of the Rules stipulates that the retailers falling in any of the category mentioned therein are required to be registered under the Sales Tax Act, 1990 in terms of Chapter-I of the Rules. Learned counsel for the petitioner has today placed on record the copy of taxpayer registration profile which clearly shows that the petitioner is a retailer registered with the sales tax department. The petitioner, therefore, fulfills the requirement prescribed by Rule 4. The return filed by the petitioner has also been appended with the record which shows that it enjoys the benefit of SRO No.1125(I) of 2011.

5. The respondents do not deny that the petitioner is a retailer. The only objection raised before this Court is that the petitioner is not registered as retailer with the sales tax department. It is furthermore apparent that the respondents have taken up the position that a retailer for seeking the benefit of sub-section (4) of section 214D of the Ordinance is required to be registered with the department after the issuance of SRO No.608(I)/2014 dated 02.07.2014. This plea of the respondents is without any merit. Rule 4 clearly stipulates that a retailer is required to be registered in the manner specified in Chapter 1 of the Rules. Notwithstanding the insertion of Rules 4 & 5 through SRO 608(I).2014, this condition *per se* envisages registration of a retailer with the

ATTESTED

Examiner

Copy: Registration

Deputy Registrar

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department prior to the issuance of the said SRO. The petitioner fulfills this criteria as he was registered on 26.12.2012 and shall be deemed to be a retailer in terms of Rule 4 of the Rules. The department, therefore, could not have selected the petitioner for audit in terms of section 214C read with sub-section 214D of the Ordinance.

6. In the circumstances this writ petition is allowed and notice dated 08.01.2018 is set aside being without lawful authority and of no legal effect.

Shan Mirza
13/04/18

(Signature)
(Shams Mehmood Mirza)
Judge.

TRUE COPY / 59322-18
In Case No. *CP 274-18*
Examiner
Copy Supply Section
Copy Branch,
Lahore High Court, Lahore

Examiner Copy Supply Section

Authorized Under Article 87 of
Constitution of Pakistan, 1973

Petition No. 2041
Case No. 247-18
Date of Presentation of Application 13/04/18
Copy Fee.....
Urgent Fee.....
Registration and other legal fees.....
Court Fee in Application.....
Total.....
Name of Copiest.....
Date of Receipt of.....
Date of Completion of Copy.....
Date of Delivery of Copy.....

927/18

(Signature)
30/4/18