Form No:HCJD/C-121

ORDER SHEET

IN THE LAHORE HIGH COURT LAHORE
JUDICIAL DEPARTMENT

Case No: W.P.No.39256/2021

Ramzan Sugar Mills Limited **Versus** Federal Board of Revenue etc.

S.No. of order/ Proceeding	Date of order/ Proceeding	Order with signature of Judge, and that of Parties or counsel, where necessary.
	21.06.2021	Mr. Mudassar Shujauddin, Advocate for the Petitioner. Malik Abdullah Raza, Advocate for the FBR assisted by Mr. Shahzad Ahmad Cheema, Advocate (on watching brief). Mirza Nasar Ahmed, Additional Attorney General for Pakistan alongwith Ms. Sadia Malik, Assistant Attorney General.

This petition has been filed by the Petitioner, Ramzan Sugar Mills Limited, under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 (the "Constitution"), against impugned notice dated 21st of March, 2021 (Annexure-E) issued by the Respondent No.4 under Section 122(9) read with Section 122(4) of the Income Tax Ordinance, 2001 (the "Ordinance").

2. Mr. Mudassar Shujauddin, Advocate states that the Petitioner is running the business of production, supply as well as marketing of sugar in Pakistan and has been paying taxes for all tax years on regular basis and the impugned notice has been issued by the Respondent No.4 for tax year 2015 against the period starting from 01st of October, 2013 upto 30th of September, 2014 (the "Tax Year") with malafide intention

because once the return was filed under Section 120 of the Ordinance, it was finalized. He further submits that the Respondent No.4 first issued notice to the Petitioner under Section 177(1) of the Ordinance on 13th of April, 2021 requesting him to provide record/documents/books of account but subsequently, withdrew the said notice, vide letter dated 17th of May, 2021, by observing as under:-

> "As you are aware that Commissioner Inland Revenue, Audit-II, LTO, Lahore has withdrawn selection of your case for audit of income tax affairs for tax year 2015 vide letter dated 17.05.2021 issued through Iris (copy is enclosed). Therefore, books of accounts/record are no more required for audit under Section 177(1) of the Income Tax Ordinance, 2001 for tax year 2015. Please depute an authorized person to collect the record, if you have submitted any record in this regard."

He next submits that pursuant to withdrawal of earlier notice, the Respondent No.4 has again issued the impugned notice under Section 122(9) read with Section 122(4) of the Ordinance by seeking some documents from him to amend the assessment, which is against the spirit of Section 122 of the ordinance and the entire procedure laid down in this Section for such amendment.

3. Malik Abdullah Raza, Advocate for the FBR has objected to the maintainability of this petition being pre-mature because the Respondent No.4 has only sought some information from the Petitioner regarding difference in sales declared by it and the amounts received by it in bank accounts as detailed in the impugned notice.

Mirza Nasar Ahmad, Additional Attorney General has supported the contentions raised by learned counsel for the FBR and also added that no final order is in the field and only notice has been issued to the Petitioner, requiring certain information and record from it under the Ordinance.

4. Arguments heard. Record perused.

5. The basic issue in this case is the interpretation of Sub-Sections (9) and (4) of Section 122 of the Ordinance. The period of the Tax Year mentioned in the impugned notice starts from 01st of October, 2013 and ends on 30th of September, 2014. The Tax Year is defined in Section 2(68) read with Section 74 of the Ordinance. For ease of the matter both these Sections are reproduced hereunder:-

> **Section 2(68) of the Ordinance**:
> "tax year" means the tax year as defined in sub-section (1) of section 74 and, in relation to a person, includes a special year or a transitional year that the person is permitted to use under section 74;
>
> **Section 74 of the ordinance**:
> Tax year.— (1) For the purpose of this Ordinance and subject to this section, the tax year shall be a period of twelve months ending on the 30th day of June (hereinafter referred to as 'normal tax year') and shall, subject to sub-section (3), be denoted by the calendar year in which the said date falls.
> 2) Where a person's income year, under the repealed Ordinance, is different from the normal tax year, or where a person is allowed, by an order under sub-section (3), to use a twelve months' period different from normal tax year, such income year or such period shall be that person's tax year (hereinafter referred to as 'special tax year') and shall, subject to sub -section (3),

be denoted by the calendar year relevant to normal tax year in which the closing date of the special tax year falls.

Learned counsel for the Petitioner has emphasized that the Tax Year, which is subject matter of this case, is outside the scope of Section 122(4) of the Ordinance, which reads as under:-

> **122. Amendment of assessments**.—
> (1) ----------
> (2) ----------
> (3) ----------
> (a) ----------
> (b) ----------
> (4) Where an assessment order (hereinafter referred to as the "original assessment") has been amended under sub-section (1) (3) or (5A), the Commissioner may further amend, [as many times as may be necessary,] the original assessment within the later of —
> (a) five years [from the end of the financial year in which] the Commissioner has issued or is treated as having issued the original assessment order to the taxpayer; or
> (b) one year [from the end of the financial year in which] the Commissioner has issued or is treated as having issued the amended assessment order to the taxpayer.

From bare perusal of Sub-Section (4) of Section 122 of the Ordinance, it is revealed that the Commissioner, which is defined in Section 2(13) of the Ordinance as the Commissioner Inland Revenue, may further amend, as many times as may be necessary, the original "assessment" order within five years from the end of the financial year in which he has issued or is treated as having issued the amended assessment order to

the taxpayer as per Section or otherwise one year from the end of the financial year in which the Commissioner has issued or is treated as having issued the amended assessment order to the taxpayer. It is, prima-facie, clear that the tax period relates to the year 2014 and the Petitioner is filing this petition in the year 2021. The word 'assessment' is defined in Sub-Section (5) of Section 2 of the Ordinance, which is reproduced hereunder for ready reference:-

> (5) "assessment" includes [provisional assessment,] re-assessment and amended assessment and the cognate expressions shall be construed accordingly.

6. Before making any observation with regard to Sub-Sections of Section 122 mentioned in the impugned notice, it is necessary to first discuss the procedure of assessment in original order and then amendment in it. It is unequivocal that assessments are made under Part-II of Chapter-X of the Ordinance, which deals with the assessment under Section 120 of the Ordinance while the scheme of "best judgment assessment" is given in Section 121 of the Ordinance and the mechanism to amend the assessment is provided in Section 122 of the Ordinance. The complete mechanism for amendment of assessment is given in Section 122 of the Ordinance with nine Sub-Sections which will be read in line with the "*Principle of Casus Omissus*" as well the "*Principle of Structured Discretion*" and the Doctrine of Textualism developed by this Court in the judgment reported as *Chenab Flour and*

General Mills etc. versus Federation of Pakistan through Secretary Revenue Division etc. **(PLD 2021 Lahore 343),** wherein it has been held that the Statute in general and Subsections of a Section will be read together to understand the true purpose and meaning of a particular provision. As regards the impugned notice, the Respondents are only seeking some information from the Petitioner about amendment of the assessment only as reflected from its last paragraph, which is reproduced hereunder:-

> "In view of the foregoing facts and circumstances of the case, you are required to explain your position on the above issue with complete record and reconciliation of difference of Rs.506,666,685 between total credit entries with total declared receipts as discussed supra with complete supporting documentary evidence by 07.06.2021 positively. Please note that in case of non-compliance, unsatisfactory or incomplete reply, this difference shall be added toward your total income/loss u/s 111(1)(b) of the Income Tax Ordinance. Besides this penalty u/s 182 may also be imposed as per law."

The impugned notice was issued on 21st of May, 2021 with due date of 27th of May, 2021. Since then, no adverse order has been passed against the Petitioner by the Respondents so far, no injury has been done, and only some information has been sought from it as evident above. Section 122(4) of the Ordinance states that the assessment order, which is defined under Section 2(5) of the Ordinance, means an assessment which includes the (i) provisional assessment; (ii) re-assessment and (iii) amended assessment while cognate

expressions shall be construed accordingly and the Commissioner may further amend, as many times, the original assessment within the time prescribed in Sub-Sections (a) and (b) of Section 122(4) of the Ordinance.

7. The assessment order is defined in the relevant Section whereas the method, period and application with regard to amendment of assessment are also given in Section 122 of the Ordinance. The ground raised by the Petitioner is that the period of the Tax Year (i.e. from 01st of October, 2013 to 30th of September, 2014) is outside the scope of Sub-Section (4) of Section 122 of the Ordinance, hence, the impugned notice may be set-aside. This prayer is not tenable, hence, cannot be allowed on the ground that the Commissioner is empowered under Section 122(4) of the Ordinance to further, amend the original assessment order, as many times, as he deems fit if read with all Sub-Sections of Section 122 of the Ordinance, and also under the Doctrine of Originalism developed by this Court in the case of *Reliance Commodities (Private) Ltd. versus Federation of Pakistan and others* **(PLD 2020 Lahore 632)=(2020 PTD 1464)** by making reference to the principle settled by a Judge of US Supreme Court, Justice Antonin Scalia, who discussed responsibilities of the judges in interpreting the statutes and the regulations and holds as under:-

> "*In exploring the neglected art of statutory interpretation, the judges resist the temptation to use legislative intention and legislative history. Hence, it is*

> *incompatible with democratic government to allow the meaning of a statute to be determined by what the judges think the law givers meant rather than by what the legislature actually promulgated. Eschewing the judicial lawmaking that is the essence of common law, judges should interpret statutes and regulations by focusing on the text itself*." **(Underlying is mine)**

Since, no adverse order has been passed against the Petitioner by the Respondents who have issued the impugned notice just for seeking the requisite information/record from it to proceed further in the matter and in the case of *Reliance Commodities (Private) Ltd. versus Federation of Pakistan and others* **(PLD 2020 Lahore 632)=(2020 PTD 1464)** this Court has already developed the Doctrine of Ripeness, by holding that unless the matter is decided by, at least one independent forum, outside the revenue hierarchy, recovery of disputed amount cannot be made, henceforth, the present petition is pre-mature, because the matter before the Tax Authorities has not been ripened so far and the entire machinery as well as the procedure is provided for adjudication of disputes before the appellate forums under the Ordinance and the Petitioner can only approach this Court in Tax Reference. Once order is passed by the concerned authority pursuant to the impugned notice, the Petitioner may assail legality of the said order before the relevant forum as per the remedy available to it under the Ordinance, including the remedy of filing an appeal with interim relief

under the principle of inbuilt stay mechanism as discussed by this Court in the case of *Shell Pakistan Limited versus Government of Punjab etc.* **(2020 PTD 1607)**, relevant Paragraph 13 of which is reproduced hereunder:-

> "The Doctrine of Statutory Rights of Appeal arises out of Article 199(1) and 199(4) of the Constitution where the High Court, if it is satisfied that no other adequate remedy is provided by law, issues writ of mandamus and prohibition keeping in view Article 199(4) of the Constitution and the time frame given therein but this right is subject to notice to the prescribed law officer with an opportunity of being heard and for reasons to be recorded in writing. Article 199 elaborates that in tax matters, after hearing the law officer, if the Court is satisfied, it may make an order for interim relief after recording reasons. Inbuilt interim stay under the statutory appeals are provided in all general laws especially in tax matters therefore, by examining the provisions of the Act read with Punjab Sales Tax on Services (Adjudication and Appeals) Rules 2012 (the **"Rules"**) it is evident that Section 64 of the Act provides procedure for the appeals to the Commissioner (Appeals) with inbuilt stay by stating that the Commissioner (Appeals) may stay the matter after hearing the parties and can also confirm the same which remains operative upto 60 days. Moreover, the same provision also provides to the tax payer that by filing appeal to the Appellate Tribunal under Section 66 of the Act and under Section 67(2)(3) of the Act, the Appellate Tribunal can also pass the interim order and then confirm the stay which may remain operative for ninety (90) days period. Thereafter, the taxpayer has a right to file reference to the High Court under Section 67A of the Act before the Division Bench which only hears the matters on the question of law. In this case the prayer of the Petitioner is to direct the

> Respondents to decide the appeal within prescribed period and under Section 64(2) in which the Commissioner (Appeals) may adjourn the hearing of the appeal from time to time and has to dispose off the appeal within a period of 60 days which is time bound provision requiring the Appellate Tribunal to decide a within a given time frame as prescribed by law. The same mechanism also gives a time frame to the Appellate Tribunal to decide the appeal within six months under Section 67(2) of the Act. Above said provisions clarify that the law has itself provided a time bound mechanism for expeditious disposal with inbuilt statutory right of appeal with inbuilt stay mechanism provided under the Statute in which both the Commissioner (Appeals) and the Tribunal have inbuilt mechanism of passing interim orders and then confirming it within a period of sixty days."

Under Article 4 of the Constitution, it is an inalienable right of every citizen of Pakistan to be treated in accordance with law and no action detrimental to his/her life, liberty, reputation or property shall be taken except as per law. The provisions contained in Sections 120 and 122(4) and (9) of the Ordinance have to be read in line with the mandate of Article 10-A of the Constitution, which provides that for determination of civil rights/obligations a person shall be entitled to fair trial and due process. Moreover, as in **Chenab Flour and General Mills Case** (*supra*) this Court, while discussing legal anthropology of the Federal Board of Revenue (the "FBR"), has declared that *the FBR is regulator of all fiscal laws in the country and being a regulator, it vests with the main goal of tax collection in the country*, therefore, the matter

of seeking record and information under various Sub-Sections of Section 122 of the Ordinance, squarely falls within domain of the FBR as well as the government officers appointed under the Ordinance and such matters need no interference by this Court as required in the Constitutional jurisdiction.

8. In view of the above, as no adverse order has been passed against the Petitioner and the impugned notice only requires certain information/document from him and alternate remedies are available to the Petitioner who can only approach this Court in a Tax Reference after exhausting all those remedies, the Petitioner is directed to provide the requisite documents/ record/information to the Respondents keeping in mind the method, application and time period as stipulated in Section 122(4) of the Ordinance, which will be decided in accordance with law within one month from the date of receipt of certified copy of this order. Under the Doctrine of Stopgap Arrangement, till then, no coercive measures shall be taken against the Petitioner.

9. With the above observations and directions, this writ petition is **disposed of**.

(JAWAD HASSAN)
JUDGE

Approved for Reporting

JUDGE

*Mājīd