

**02ND OF 2024 KTBA ONE PAGER
CASE LAW UPDATE
(June 07, 2024)**

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Dear Members,

A brief update on a judgment by the Sindh High Court on “**Demand of Record or Information by SRB In Absence of Audit, Inquiry or Investigation is Abuse of Powers**” is being shared with you for your knowledge. The order has been attached herewith the update.

This update is in line with the efforts undertaken by our “**CASE LAW UPDATE COMMITTEE**” to apprise our Bar members with important court decisions.

You are equally encouraged to share any important case law, which you feel that should be disseminated for the good of all members.

You may contact the Committee Convener Mr. Shams M. Ansari or at the Bar’s numbers 021-99212222, 99211792 or email at info@karachitaxbar.com & ktba01@gmail.com

(Syed Zafar Ahmed)
President

(Asim Rizwani Sheikh)
Hon. General Secretary

02ND OF 2024 KTBA ONE PAGER
CASE LAW UPDATE
(June 07, 2024)

DEMAND OF RECORD OR INFORMATION BY SRB IN ABSENCE OF AUDIT, INQUIRY OR INVESTIGATION IS ABUSE OF POWERS

Appellate Authority: High Court of Sindh

Appellants: PTCL vrs Secretary Finance of Sindh

Section: Sections 52(1), 28 and 48 of the Sindh Sales Tax on Services Act, 2011 (the Act)

Detailed judgment was issued on April, 04 2019.

Background: Petitions were filed challenging various notices issued by the Sindh Revenue Board under Section 52(1) of the Act. These notices demanded production of documents and records for examination. The petitioners argued that since there is no audit, inquiry or investigation ongoing against them under Sections 28 and 48 of the Act, issuance of such notices lacks the lawful authority and, therefore, they sought a declaration from the High Court that the notices are illegal.

Decision of the Court:

First Ruling of the Court:

NEXUS OF RECORD WITH AUDIT, INQUIRY, INVESTIGATION OR ASSESSMENT

The interpretation of Section 52 of the Act cannot be considered in isolation as it makes reference to Sections 28 and 48, which pertain to audit, inquiry or investigation. Section 52, therefore, is complementary to these provisions rather than being independent. It does not grant the officers any authority to proceed with assessment and tax recovery. Since the power to call for information, documents or records is not explicitly provided for in the related provisions of audit, inquiry, investigation or assessment, Section 52 complements these provisions.

Second Ruling of the Court:

HOLISTIC APPROACH TO THE OVERALL SCHEME

In interpreting legal provisions, particularly in taxation laws, a comprehensive understanding requires a holistic approach rather than an isolated examination. In the present petitions direct notices under Section 52(1) of the Act were issued without even any error was identified in their returns, demanding explanations for a decline in sales tax for the first quarter of 2014-2015 compared to the previous year along with various document submissions.

Since there were no grounds beyond those mentioned therein to justify their issuance the same cannot held to have been issued with proper application of mind and with the Commissioner's approval.

Third Ruling of the Court:

ABUSE OF LEGAL PROCESS

A careful review of the Act reveals that the Assistant Commissioner of SRB cannot demand information and documents from a registered person under Section 52(1) of the Act as it is established legally that authorities cannot assume or exercise unbridled powers beyond what's specified in the statute. Such actions, if condoned, would amount to encouraging the abuse of legal process under the guise of exercising powers granted by Section 52(1) of the Act.

DISCLAIMER:

This update has been prepared for KTBA members and carries a brief narrative on a detailed Judgment and does not contain an opinion of the Bar, in any manner or sort. It is therefore, suggested that the judgment alone should be relied upon. Any reliance on the summary in any proceedings would not be binding on KTBA.

IN THE HIGH COURT OF SINDH AT KARACHI

PRESENT:

***Mr. Justice Aqeel Ahmed Abbasi
Mr. Justice Zulfiqar Ahmed Khan.***

C. P. No.D-5687 of 2014

Pakistan Telecommunication Company Limited.....Petitioner

C. P. No.D-567 of 2014

M/s. Sanpak Engineering Industries.....Petitioner

C. P. No.D-634 of 2015

M/s. Telecard Limited.....Petitioner

C. P. No.D-1128 of 2015

M/s. Pakistan Mobile Communication.....Petitioner

C. P. No.D-1298 of 2015

M/s. Linkdotnet Telecom Ltd.....Petitioner

C. P. No.D-1299 of 2015

Waseela Microfinance.....Petitioner

C. P. No.D-2027 of 2015

M/s. CM Pak LimitedPetitioner

C. P. No.D-2325 of 2015

M/s. Pakistan Mobile Communication.....Petitioner

C. P. No.D-6186 of 2017

M/s. Al Abbas Sugar Mills Ltd.....Petitioner

C. P. No.D-8485 of 2017

M/s. Lucky Electric Power Company.....Petitioner

C. P. No.D-8681 of 2017

M/s. International Textile Ltd.....Petitioner

C. P. No.D-176 of 2018

M/s. Brothers Enterprises.....Petitioner

C. P. No.D-498 of 2018

M/s. Webtbury (Pvt) Ltd.....Petitioner

C. P. No.D-658 of 2018

M/s. Kassim Textile (Pvt) Ltd.....Petitioner

C. P. No.D-971 of 2018

M/s. Grace Apparel (Pvt.) Ltd.....Petitioner

C. P. No.D-1644 of 2018

M/s. Tenega Generasi Ltd.....Petitioner

C. P. No.D-1779 of 2018

M/s. First Al-Noor Modaraba Ltd.....Petitioner

C. P. No.D-2523 of 2018

Mirpurkhas Sugar Mills.....Petitioner

C. P. No.D-2576 of 2018

Hawa Energy Ltd.....Petitioner

C. P. No.D-2868 of 2018

M/s. Abu Dawood Trading Co. Pak (Pvt.) Ltd.....Petitioner

C. P. No.D-2986 of 2018

M/s. Garibsons (Pvt) Ltd.....Petitioner

C. P. No.D-3041 of 2018

M/s. Team A. Ventures (Pvt) Ltd.....Petitioner

C. P. No.D-3042 of 2018

M/s. Habib Metropolitan Financial Services.....Petitioner

C. P. No.D-3380 of 2018

Hilton Pharma (Pvt) Ltd.....Petitioner

C. P. No.D-3554 of 2018

M/s. ACME Mills (Pvt.) Ltd.....Petitioner

C. P. No.D-3748 of 2018

M/s. H2 Ready-Mix (Pvt) Ltd.....Petitioner

C. P. No.D-4925 of 2018

M/s. Ismail Industries Ltd.....Petitioner

C. P. No.D-6814 of 2018

M/s. B.R.R. Guardian Modaraba Ltd.....Petitioner

C. P. No.D-7367 of 2018

M/s. Y.B. Pakistan.....Petitioner

C. P. No.D-7368 of 2018

M/s. Younus Textile Mills Ltd.....Petitioner

C. P. No.D-8019 of 2018

M/s. Shujaabad Agro Industries.....Petitioner

C. P. No.D-8425 of 2018

M/s. Paragon Constructors (Pvt.) Ltd.....Petitioner

C. P. No.D-100 of 2019

M/s. IS Enterprises.....Petitioner

C. P. No.D-841 of 2019

National Logistics Cell.....Petitioner

C. P. No.D-1206 of 2019

N.L.C.....Petitioner

C. P. No.D-1207 of 2019

N.L.C.....Petitioner

C. P. No.D-1452 of 2019

M/s. Al-Abid Silk Mills Ltd.....Petitioner

C. P. No.D-2482 of 2019

M/s. Hilton Pharms (Pvt.) Ltd.....Petitioner

C. P. No.D-2873 of 2019

M/s. Tex Mark.....Petitioner

C. P. No.D-3370 of 2019

M/s. Logistics (Pvt.) Ltd.....Petitioner

C. P. No.D-3371 of 2019

M/s. Logistics (Pvt.) Ltd.....Petitioner

C. P. No.D-5058 of 2019

M/s. Liberty Mills Ltd.....Petitioner

VERSUS

Sindh through Secretary Finance,
Sindh Secretariat and others.....Respondents

FOR PETITIONERS

: Through Mr. Khalid Jawed Khan,
Advocate alongwith Mr. Uzair Qadir
Shoro, Advocate

Mr. Javed Farooqui, Advocate.

Mr. Abdul Rahim Lakhani, Advocate
alongwith M/s. Abdul Jabbar Qureshi and
Atta Muhammad Qureshi, Advocates.

Mr. Hyder Ali Khan, Advocate alongwith
Mr. Sami-ur-Rehman Khan, Advocate.

Mr. Abdul Sattar Pirzada, Advocate.

Qazi Umair Ali, Advocate.

M/s. Anas Makhdoom and Ahmed
Farhaj, Advocates.

Mr. Arshad Shehzad, Advocate.

Mr. Nadeem Yasin, Advocate.

Mr. Muhammad Faheem Bhayo,
Advocate.

Rana Sakhawat Ali, Advocate holds brief
for Mr. Ayyaz Shaukat, Advocate.

FOR RESPONDENTS : Through Mr. Ghulam Murtaza Korai,
Advocate for SRB.

Qazir Bashir, Asst. A.G. Sindh.

Mr. Muhammad Aminullah Siddiqui,
Asst. Attorney General.

Mr. Muhammad Aqeel Qureshi,
Advocate

Mr. S. Mohsin Imam Wasti, Advocate

Dates of Hearing : 23.05.2017, 15.05.2018 & 16.04.2019

Date of Short Order : 16.04.2019

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J U D G M E N T

Aqeel Ahmed Abbasi, J : -- Through above captioned Petitions, the petitioners have impugned various notices issued under Section 52(1) of the Sindh Sales Tax on Services Act, 2011, by the respondents/Sindh Revenue Board, whereby, the petitioners are required to produce certain documents and records for examination, on the grounds that in the absence of any audit, inquiry, or investigation pending against the petitioners or initiated by the competent authority in this regard in terms of Section 28 read with Section 48 of the Sindh Sales Tax on Services Act, 2011, issuance of such notices under the facts and circumstances, are without lawful authority and had no legal effect. It has been prayed that the impugned notices issued under Section 52(1) of the Sindh Sales Tax on Services Act, 2011 may be declared to be illegal and without lawful authority, whereas, respondents may be directed to withdraw the same and not to take any coercive action or to pass any adverse order against the petitioners pursuant to the impugned notices, as referred to hereinabove.

2. It has been contended by the learned counsel for the petitioners that the impugned notices issued under Section 52(1) of the Sindh Sales Tax on Services Act, 2011 in the absence of any audit, inquiry or investigation

pending against the petitioners are without lawful authority. According to the learned counsel for the petitioners, the provisions of Section 52(1) of the Sindh Sales Tax on Services Act, 2011 cannot be read in isolation, as there is reference to the provisions of Section 28 read with Section 48 of the Sindh Sales Tax on Services Act, 2011, whereas, without invoking the provisions of law relating to audit, inquiry, investigation or assessment under the Sindh Sales Tax on Services Act, 2011, a notice under Section 52 of the Sindh Sales Tax on Services Act, 2011 cannot be issued to initiate fishing and roving inquiry, without pointing out any illegality, error or deficiency in the tax returns filed by the petitioners. It has been further argued by the learned counsel for the petitioners that while interpreting the similar provisions of law under the Sindh Sales Tax on Services Act, 2011 i.e. Sections 11, 11-A and 45, the learned Benches of Lahore High Court in the cases of (i) **AAA STEEL MILLS LIMITED v. COLLECTOR OF SALES TAX AND CENTRAL EXCISE, COLLECTORATE OF SALES TAX (2004 PTD 624)** and (ii) **MESSRS LAHORE ELECTRIC SUPPLY COMPANY LTD. v. FEDERAL BOARD OF REVENUE AND 2 OTHERS (2015 PTD 1)**, have been pleased to hold that in the absence of lawfully instituted proceedings, assessment or adjudication, a taxpayer cannot be required to furnish any information or documents, without pointing out any illegality, error or deficiency in the tax return filed by a taxpayer. While concluding their arguments, learned counsel for the petitioners have prayed that since the impugned notices have been issued without lawful authority, therefore, the same may be declared illegal and the respondents may be directed to withdraw the same.

3. Conversely, learned counsel for the respondents have controverted the submissions made by the learned counsel for the petitioners and have raised an objection as to maintainability of instant petitions on the grounds that on mere issuance of Show Cause Notices under Section 52(1) of the Sindh Sales Tax on Services Act, 2011, whereas, no adverse order has

been passed against the petitioners, therefore, instant petitions are misconceived and not maintainable, hence liable to be dismissed in limine. It has been further contended by the learned counsel for the respondents that without prejudice to hereinabove legal objection as to maintainability of these petitions, the impugned Notices have been rightly issued under Section 52(1) of the Sindh Sales Tax on Services Act, 2011, which authorizes an officer of Sindh Revenue Board [SRB] to require any person to produce for examination, such documents or record, which the officer of the SRB considers necessary in relation to any matter under the Act or relevant to the audit, inquiry or investigation under the Act. According to the learned counsel for the respondents, the provisions of under Section 52(1) of the Sindh Sales Tax on Services Act, 2011 are independent from the provisions of Sections 28 and 48 of the Sindh Sales Tax on Services Act, 2011, therefore, cannot be read with the provision of Section 52(1) of the Sindh Sales Tax on Services Act, 2011 as argued by the learned counsel for the petitioners. It has been prayed that instant petitions may be dismissed in limine for being not maintainable, whereas, the petitioners may be directed to submit response to the impugned Notices issued under Section 52(1) of the Sindh Sales Tax on Services Act, 2011 and produce the relevant documents and information sought through such Notices in accordance with law.

4. We have heard the learned counsel for the parties, perused the record with their assistance and have also examined the relevant provisions of Sindh Sales Tax on Services Act, 2011 and the case-law relied upon by the learned counsel for the parties. It will be advantageous to examine the provisions of Sections 52(1), 28 and 48 of the Sindh Sales Tax on Services Act, 2011 in order to ascertain the scope of such provisions and to decide the legal controversy agitated through instant petitions in accordance with law. The relevant provisions of law read as follows: -

“52. Obligation to produce documents and provide information. –(1) Notwithstanding anything contained in this Act or any other law for the time being in force, any person required to maintain any [record under the Act or any other law for the time being in force], shall, on demand by an officer of the SRB, not below the rank of [an Auditor SRB or a Sindh Sales Tax Officer SRB], by notice in writing, as and when specified in the notice—

- (a) produce for examination, such documents or records which the officer of the SRB considers necessary [in relation to any matter under the Act] or relevant to the audit, inquiry or investigation under the Act;

(Emphasis applied)

- (b) allow the officer of the SRB to take extracts from or make copies of such documents or records; and
- (c) appear before the officer of the SRB and answer any question put to him concerning the documents and records relating to the audit, investigation, or inquiry referred to in clause (a) above.

28. Audit Proceedings.– (1) An officer of the SRB, not below the rank of [Auditor SRB], may, on the basis of the return submitted by a registered person or the records obtained under sub-section (2) of section 27 conduct an audit of such person once in a year.

Provided that in case the Commissioner SRB has any information showing that such registered person is involved in tax fraud or evasion of tax, he may authorize an officer of the SRB, not below the rank of [Auditor SRB], to conduct an inquiry or investigation under section 48 which may or may not be in addition to any audit carried out for the same period.

- (2) Where the officer of the SRB decides to conduct an audit under sub-section (1), he shall issue a notice of audit to the person informing him of the audit proceedings and direct him to produce any records or documents which such officer may require for conducting the audit [.]

[Provided that the officer of the SRB may, with the permission of the Commissioner, conduct the audit in the place of business or the office of the registered person directing him to produce the records and documents in such premises as indicated in the notice.]

- (3) The officer of the SRB shall conduct a preliminary audit and issue an audit observation pointing out the contraventions of the Act or rules, as the case may be, and the amount of tax evaded therein, on the basis of scrutiny of such records. The registered person may, within a period of 21 days of the receipt of the audit observation, submit his point of view in writing.

- (4) If, within the period prescribed in sub-section (3), no reply is received or the reply furnished by the registered person is found unsatisfactory, the officer of the SRB shall issue an audit report specifying the amount of tax or charge that has not been levied or has been short levied or any other violation of any provision of Act or rules made there under.

(5) After completion of the audit under this section or any other provision of law, the officer of the SRB not below the rank of Assistant Commissioner SRB, may pass an order in accordance with the provisions of section 23 or section 47, as the case may be, [assessing or determining the] amount of tax, charging default surcharge and imposing a penalty.

(6) Notwithstanding the penalties prescribed in section 43:--

(a) If a registered person wishes to deposit the amount of tax short paid or amount of tax evaded alongwith default surcharge voluntarily, wherever it comes to his notice, he shall, before receipt of notice of audit, file a revised return and shall deposit the amount short paid or amount of tax evaded alongwith default surcharge, in which case no penalty shall be recovered from him;

(b) If a registered person wishes to deposit the amount of tax short paid or amount of tax evaded alongwith default surcharge during the audit, or at any time before issuance of show cause notice in lieu of the audit report, he shall file a revised return and shall deposit the evaded amount of tax, default surcharge under section 44, and twenty per cent of the penalty payable under section 43, in which case a show cause notice in lieu of the audit report will not be issued in the matter; and

(c) If a registered person wishes to deposit the amount of tax short paid or amount of tax evaded alongwith default surcharge after issuance of show cause notice, he shall file a revised return and shall deposit the evaded amount of tax, default surcharge under section 44, and fifty per cent of the penalty payable under section 43 and thereafter, the show cause notice, shall stand abated.”

48. Power to summon persons to give evidence and produce documents in inquiries under the Act.– (1) Any officer of the SRB shall have the power to summon any person whose attendance he considers necessary either to tender evidence or to produce documents or any other thing in any audit, inquiry or investigation, which such officer is making for any of the purpose of this Act. (Emphasis applied)

(d) Any person summoned under sub-section (1) shall be bound to attend either in person or by an authorized agent, as the officer of the SRB may direct.

(e) Notwithstanding anything in sub-section (1) and (2), a person who is exempted from personal appearance in a court under sections 132 and 133 of the Code of Civil Procedure (No. V of 1908), shall not be required to appear in person.

(f) Any inquiry or investigation before an officer of the SRB shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 of the Pakistan Penal Code (No. XLV of 1860).

5. Since the learned counsel for the petitioners have mainly relied upon a reported judgment of Lahore High Court in the case of **MESSRS LAHORE ELECTRIC SUPPLY COMPANY LTD. THROUGH DIRECTOR LEGAL v. FEDERAL BOARD OF REVENUE THROUGH CHAIRMAN AND 2 OTHERS (2015 PTD 1)** in respect of the provisions of Section 11, 11A and 48 of Sindh Sales Tax Act, 1990, which according to learned counsel for the petitioners, are identical in nature to the provisions of Sections 52(1), 28 and 48 of the Sindh Sales Tax on Services Act, 2011, therefore, for the purposes of comparison it will be advantageous to reproduce the aforesaid provisions of Sales Tax Act, 1990, which reads as follows: -

“[11. Assessment of Tax & Recovery of Tax not levied or short levied or erroneously refunded] .- (1) Where a person who is required to file a tax return fails to file the return for a tax period by the due date or pays an amount which, for some miscalculation is less than the amount of tax actually payable, an officer of Inland Revenue shall, after a notice to show cause to such person, make an order for assessment of tax, including imposition of penalty and default surcharge in accordance with sections 33 and 34:

Provided that where a person required to file a tax return files the return after the due date and pays the amount of tax payable in accordance with the tax return along with default surcharge and penalty, the notice to show cause and the order of assessment shall abate.

(2) *Where a person has not paid the tax due on supplies made by him or has made short payment or has claimed input tax credit or refund which is not admissible under this Act for reasons other than those specified in subsection (1), an officer of Inland Revenue shall after a notice to show cause to such person, make an order for assessment of tax actually payable by that person or determine the amount of tax credit or tax refund which he has unlawfully claimed and shall impose a penalty and charge default surcharge in accordance with sections 33 and 34.*

(3) *Where by reason of some collusion or deliberate Act any tax or charge has not been levied or made or has been short levied or has been erroneously refunded, the person liable to pay any amount of tax or charge or the amount of fund erroneously made shall be served with the notice requiring him to show cause for payment of the amount specified in the notice.*

(4) *Where, by reason of any inadvertence, error or misconstruction any tax or charge has not been levied or made or has been short-levied or has been erroneously refunded, the person liable to the amount of tax or charge or the amount of refund erroneously made shall be served*

with a notice requiring him to show cause for payment of the amount specified in the notice;

Provided that, where a tax or charge has not been levied under this sub section the amount of tax shall be recovered as tax fraction of the value of supply.

¹*[(4A) Where any person, required to withhold sales tax under the provisions of this Act or the rules made thereunder, fails to withhold the tax or withholds the same but fails to deposit the same in the prescribed manner, an officer of Inland Revenue shall after a notice to such person to show cause, determine the amount in default].*

(5) *No order under this section shall be made by an officer of Inland Revenue unless a notice to show cause is given within five years, of the relevant date, to the person in default specifying the grounds on which it is intended to proceed against him and the officer of Sales Tax shall take into consideration the representation made by such person and provide him with an opportunity of being heard:*

Provided that order under this section shall be made within one hundred and twenty days of issuance of show cause notice or within such extended period as the Commissioner may, for reasons to be recorded in writing, fix provided that such extended period shall in no case exceed ninety days:

Provided further that any period during which the proceedings are adjourned on account of a stay order or Alternative Dispute Resolution proceedings or the time taken through adjournment by the petitioner not exceeding sixty days shall be excluded from the computation of the period specified in the first proviso.

(6) *Notwithstanding anything in sub-section (1), where a registered person fails to file a return, an officer of Inland Revenue, not below the rank of Assistant Commissioner, shall subject to such conditions as specified by the Federal Board of Revenue, determine the minimum tax liability of the registered person.*

(7) *For the purpose of this section, the expression “relevant date” means—*

(a) the time of payment of tax or charge as provided under section 6; and

(b) in a case where tax or charge has been erroneously refunded, the date of its refund.]

“[11A. Short paid amounts recoverable without notice.-*Notwithstanding any of the provisions of this Act, where a registered person pays the amount of tax less than the tax due as indicated in his return, the short paid amount of tax along with default surcharge shall be recovered from such person by stopping removal of any goods from his business premises and through attachment of his business bank accounts, without giving him a show cause notice and without prejudice to any other action prescribed under section 48 of this Act or the rules made thereunder:*

Provided that no penalty under section 33 of this Act shall be imposed unless a show cause notice is given to such person.]”

48. Recovery of arrears of tax.--(1) ¹[Subject to sub-section (1A), where] any amount of tax ²[...] is due from any person, the officer of ³[Inland Revenue] may:-

(a) deduct the amount from any money owing to person from whom such amount is recoverable and which may be at the disposal or in the control of such officer or any officer of Income Tax, Customs or Central Excise Department;

(b) require by a notice in writing any person who holds or may subsequently hold any money for or on account of the person from whom tax may be recoverable to pay to such officer the amount specified in the notice;

(a) stop removal of any goods from the business premises of such person till such time the amount of tax is paid or recovered in full;

⁴[(ca) require by a notice in writing any person to stop clearance of imported goods or manufactured goods or attach bank accounts;]

(b) seal the business premises till such time the amount of tax is paid or- recovered in full;

(c) attach and sell or sell without attachment any movable or immovable property of the registered person from whom tax is due ⁵]; and]

(f) ¹[...] recover such amount by attachment and sale of any moveable or- immovable property of the guarantor, person, company, bank or financial institution, where a guarantor or any other person, company, bank or financial institution fails to make payment under such guarantee, bond or instrument ²[:

Provided that the Commissioner Inland Revenue or any officer of Inland Revenue shall not issue notice under this section or the rules made thereunder for recovery of any tax due from a taxpayer if the said taxpayer has filed an appeal under section 45B in respect of the order under which the tax sought to be recovered has become payable and the appeal has not been decided by the Commissioner (Appeals), subject to the condition that ³[ten] per cent of the amount of tax due has been paid by the taxpayer.]

⁴[(1A) If any arrears of tax, default surcharge, penalty or any other amount which is adjudged or payable by any person and which cannot be recovered in the manner prescribed above, the Board or any officer authorized by the Board, may, write off the arrears in the manner as may be prescribed by the Board.]

(2) For the purpose of recovery of tax, penalty or any other demand raised under this Act, the officer of ⁵[Inland Revenue] shall have the same powers which under the Code of Civil Procedure 1908 (V of 1908), a Civil Court has for the purpose of recovery of an amount due under a decree.”

6. From perusal of the record, it has been observed that while issuing impugned Notices under Section 52(1) of the Sindh Sales Tax on Services Act, 2011 to the petitioners, the officers of SRB, without pointing out any error, deficiency or discrepancy in the sales tax returns filed by the petitioners and in the absence of any inquiry, investigation or audit proceedings pending against them, have required the petitioners to submit reasons/justification in quantifiable manner on account of decline in sales tax amount deposited by the petitioner(s) during the first quarter of 2014-2015 alongwith documentary evidence. Petitioners are also required to submit the copies of purchase invoices and invoice wise details of the input tax claimed during the first quarter of 2014-2015, whereas, in case of non-compliance or partial compliance, the respondents have threatened the petitioners for necessary penal action under Section 43(15) of the Sindh Sales Tax on Services Act, 2011. As per scheme of law, a registered person providing taxable service in terms of Section 3, chargeable to sales tax on services in terms of Sections 8 and 9 of the Sindh Sales Tax on Services Act, 2011, is required to submit return in the prescribed form under Section 3 of the Sindh Sales Tax on Services Act, 2011, indicating the tax due during the tax period. Whereas, Section 23 of the Sindh Sales Tax on Services Act, 2011 provides for assessment, authorizing an officer of the SRB not below the rank of Assistant Commissioner of SRB, on the basis of any information acquired during an audit, inquiry, investigation or otherwise, if such officer is of the opinion that registered person has not paid the tax due on taxable services provided by him or has made short payment, he can make an assessment of sales tax, actually payable by that person and to impose a penalty and default surcharge in terms of Sections 43 and 44 of the Sindh Sales Tax on Services Act, 2011. On careful examination of the provisions of Section 52(1) of the Sindh Sales Tax on Services Act, 2011, it has been noted that an officer of SRB, not below the rank of Assistant Commissioner, has the authority to call for the record or such documents

for examination, which officer of the SRB considers necessary in relation to any matter under the Act or relevant to the audit, inquiry or investigation under the Sindh Sales Tax on Services Act, 2011. The officer of SRB is also authorized to take extracts from or make copies of such record and can also call any person to appear before the officer of SRB and answer any question put to him concerning the documents and records relevant to the audit, investigation or inquiry as referred to Clause (a) sub-section (1) of Section 52 of the Sindh Sales Tax on Services Act, 2011. Similarly, as per provision of sub-section (2) of Section 52 of the Sindh Sales Tax on Services Act, 2011, an officer of the SRB conducting an audit, inquiry or an investigation, under the Act, 2011, has the authority to require in writing any person, department, company or organization to furnish such information as is held by that person, department, company or organization, which, in the opinion of the officer of the SRB, is relevant to such audit, inquiry or investigation. We are of the opinion that Section 52 of the Sindh Sales Tax on Services Act, 2011, cannot be read in isolation, as there has been reference to the provisions of Sections 28 and 48 in Section 52 of the Sindh Sales Tax on Services Act, 2011, which relate to the audit, inquiry or investigation proceedings under the Act, 2011. In other words, provisions of Section 52 are complimentary in nature to the provisions relating to audit, inquiry, investigation or Assessment under the Sindh Sales Tax on Services Act, 2011. Provisions of Section 52 are not independent or comprehensive in nature as the same do not authorize the officer of Sindh Revenue Board to proceed further for the purposes of Assessment and recovery of tax, if any payable by a registered person. Since authority to calling for information, documents or record, has not been specifically given under the provisions relating to audit, inquiry, investigation or Assessment, therefore, provisions of Section 52 compliment the provisions of law as referred to hereinabove. We may observe that while interpreting different provisions of law, particularly, in taxation laws, in order to ascertain the purpose and scope as

well as scheme of law, reading such provisions in isolation may lead to incorrect interpretation of such provisions of law, therefore, the harmonious construction of the relevant provisions of law is always recommended to ascertain the scope and spirit of law. Reliance in this regard can be placed in the case of **WAQAR ZAFAR BAKHTAWARI AND 6 OTHERS v. HAJI MAZHAR HUSSAIN SHAH AND OTHERS (PLD 2018 SC 81)**. Admittedly, in the above captioned petitions, no proceedings of audit, inquiry or investigation are pending against the petitioners, without pointing out any error or deficiency in the returns filed by the petitioners, or invoking the relevant provisions of audit, inquiry, investigation or Assessment, whereas, direct Notices have been issued under Section 52(1) of the Sindh Sales Tax on Services Act, 2011, merely on the ground that in view of decline in the amount of sales tax for the first quarter of 2014-2015, as compared to the first quarter of 2013-2014, petitioners are required to submit reasons/justification for such decline, and also to submit various documents, including copies of purchase invoices and invoice wise details of input tax claimed during the first quarter of 2014-2015. There seems no ground, other than the ground, as referred to hereinabove, disclosed in the impugned Notices, while invoking the provision of Section 52(1) of the Sindh Sales Tax on Services Act, 2011, which otherwise, particularly, in the absence of any audit, inquiry, investigation or Assessment proceedings initiated or pending against the petitioners in respect of their tax affairs, and without pointing out any illegality, error or deficiency and discrepancy in the sales tax return(s) filed by the petitioners, lacks mandate of law and also beyond the scope of Section 52(1) of the Sindh Sales Tax on Services Act, 2011, which *prima facie* can be invoked only with proper application of mind by an officer of SRB with the approval of the Commissioner, conducting an audit, inquiry or investigation in terms of Section 28 read with Section 48 of the Sindh Sales Tax on Services Act, 2011. Such unbridled

authority cannot be left at the whims and discretion of an officer of SRB to the disadvantage of a taxpayer.

7. Careful perusal of the provisions of Sindh Sales Tax on Services Act, 2011, further reflects unless there are lawfully instituted proceedings of assessment, audit, inquiry or investigation, which require the approval by the Commissioner, Sindh Revenue Board, the Assistant Commissioner, SRB cannot call for information and documents from a registered person under purported exercise in terms of section 52(1) of the Sindh Sales Tax on Services Act, 2011. It is settled legal position that except the authority specifically given under a Statute to the concerned authority, unbridled powers cannot be assumed or exercised by such authority, nor it can be approved by this Court, as it would amount to encourage the abuse of process of law under the garb of purported exercise of powers to call for information and documents in terms of section 52(1) of the Sindh Sales Tax on Services Act, 2011. Reliance in this regard can be placed in the case of **AAA STEEL MILLS LIMITED v. COLLECTOR OF SALES TAX AND CENTRAL EXCISE, COLLECTORATE OF SALES TAX (2004 PTD 624)**, wherein it has been held as under: -

“6. The provisions of sections 11, 11-A and 45 are necessarily different in vital aspects. The assessment and recovery of tax under sections 11 and 11-A respectively is a summary proceedings wherefrom the return/record submitted by a registered, person the default in payment of tax or short payment or an inadmissible tax credit or refund is discernible on the face of such return. In these cases an officer of the department on the executive side can proceed to make an assessment of tax due on the basis of that return/record subject to the conditions given in sub-clause (4) of section 11 and the proviso thereof. The officer thus acts both as prosecutor as well as a judge. The default being apparent from the documents/record/material submitted by the taxpayer collection of further evidence is not required. The recovery of short paid admitted liability in a return is likewise recoverable in a summary manner.

7. The power of adjudication contemplated under section 45 of the Act is altogether different. The adjudication proceedings contemplate not only issuance of a show-cause notice but also requiring the tax payers as well as the Department to produce evidence and material in support of their respective stands. These proceedings are normally initiated on the basis of a c6ntravention report which is akin to the submission of challan

in a Court of criminal jurisdiction. Although such proceedings are not criminal in nature yet summary of allegations in the form of contravention report submitted before the Adjudicating Authority partakes a number of characteristics of a challan submitted before a Judge or a Magistrate on the criminal side.”

Further reliance can be placed in the case of **MESSRS LAHORE ELECTRIC SUPPLY COMPANY LTD. v. FEDERAL BOARD OF REVENUE AND 2 OTHERS (2015 PTD 1)**, wherein it has been held as under: -

“11. In the present case, the amount of tax due indicated in the return is being disputed by the department, therefore, in such an eventuality, statutory assessment is required under section 11 of the Act and section 11A has no application to the case of the appellant.

12. We are afraid, the view expressed in the impugned judgment that verification of electricity bills, placed on the website of the appellant, is permissible and reliance can be placed on any other extraneous information other than the amount of tax due indicated in the sales tax return under section 11A, is not the correct legal position. For section 11A to come into operation, only the amount of tax due indicated by the taxpayer in the sales tax return is to be considered. We may add for the sake of completeness that even though the taxpayer is under a legal obligation to file a true and correct return, any alleged violation of the same can only be resolved through adjudicatory process provided under section 11 of the Act subject to the selection of the case of the taxpayer under the Act and not through the mechanism of section 11A which is purely a recovery provision.

13. Under section 11A the amount of tax due indicated by the taxpayer in the sales tax return is considered to be correct and final. It is then used as a benchmark to see whether the taxpayer has deposited the said amount of tax due along with the sales tax return. In case of failure to deposit the indicated amount of tax due or in case of short payment, recovery proceedings can be initiated against the taxpayer under section 11A.

14. Even otherwise, section 11A has practically lost its efficacy after the new e-filing system has been enforced. The new system does not entertain any electronic return if the amount of tax deposited by the taxpayer is less than the amount of tax due indicated in the return. Reference is made to Rule 18 of the Sales Tax Rules, 2006.

15. For the above reasons instant appeal, as well as, connected appeals and writ petitions are allowed and impugned Notices dated 28-10-2013 issued under section 11A of the Act and subsequent recovery thereunder are declared illegal and without lawful authority and are, therefore, set aside.”

8. In view of hereinabove facts and circumstances of the case, we are of the opinion that the impugned notices issued under Section 52(1) of the Sindh Sales Tax on Services Act, 2011 in the absence of any audit, inquiry, investigation or assessment proceedings pending against the petitioners are illegal and without lawful authority. Accordingly, vide our short order dated 16.04.2019, above Petitions were allowed and the impugned notices issued by the Sindh Revenue Board under Section 52(1) of the Sindh Sales Tax on Services Act, 2011 were declared to be illegal and without lawful authority.

9. Above are the reasons of the said short order.

JUDGE

JUDGE

Farhan/Shakoor