

JUDGMENT SHEET.

IN THE ISLAMABAD HIGH COURT,
ISLAMABAD.

W.P. No.3902/2021

MOL Pakistan Oil & Gas B.V

Versus

Federal Board of Revenue, through Chairman, Islamabad, etc.

Petitioner By : M/s Abuzar Salman Khan Niazi and
Wasim Abid, Advocates.
Respondents By : Mr. Saeed Ahmed Zaidi, Advocate for the
respondents.
Date of Decision : 22.09.2022.

AAMER FAROOQ, J. – The petitioner was selected for audit under section 72 B of the Sales Tax Act, 1990 ("**the Act**") for the Tax Year July 2013 to June 2014. It approached this Court by way of Writ Petition No. 570/2016, which was disposed of on 18.05.2018. Respondent No.3 issued a show cause notice to the petitioner on 23.10.2018, alleging discrepancies pursuant to the audit report; the referred notice was duly responded, however, the same culminated in Order-in-Original on 29.12.2018. Appeal was preferred by the Commissioner (Appeals) against the said Order-in-Original, which was decided vide order dated 12.02.2019, whereby partially the same was accepted but the issue pertaining the inadmissibility of tax was decided against the petitioner. Both the parties challenged the order in appeal before the Appellate Tribunal Inland Revenue, which was decided on 28.09.2021 and on the same date recovery was effected against the petitioner in the sum of Rs.976,462,191/- under section 48 of the Act read with Rule 71 of the Sales Tax Rules, 2006

("the Rules"). The said recovery was effected from the Bank accounts of petitioner on the same date. The petitioner filed Tax Reference against the judgment of the Appellate Tribunal Inland Revenue (S.T.R No.17/2021) which is pending before the Division Bench of this Court and a status quo order was passed in the same on 20.10.2021. The petitioner is aggrieved of recovery effected from the Bank accounts of petitioner.

2. *Mr. Abuzar Salman Khan Niazi, AHC*, alongwith *Mr. Waseem Abid, AHC*, appearing on behalf of the petitioner, *inter alia*, contended that recovery has been effected in violation of Rule 71 of the Rules as well as Section 48 *ibid*. Learned counsel took the Court through the provisions to substantiate the argument that the same could not have been done. He also made reference to decision of this Court in case titled "*Oracle Systems Pakistan (Private) Limited versus Pakistan through the Secretary Revenue & Ex Officio chairman Federal Board of Revenue (FBR), Islamabad, etc.*" (**W.P. No.3876/2021**) as well as "*Attock Refinery Limited versus Federation of Pakistan, etc.*" (**W.P. No.2321/2022**).

3. *Mr. Saeed Ahmed Zaidi, AHC*, appearing on behalf of the respondent department, *inter alia*, contended that recovery has been effected in accordance with law and no violation of any rule or provision of the Act has been committed.

4. Arguments on behalf of the learned counsel for the parties have been heard and the documents placed on record examined with their able assistance.

5. The summary of the facts resulting in filing of the instant petition have been mentioned with brevity hereinabove. The sole grievance raised in the instant petition is regarding recovery of the tax liability, in the sum mentioned hereinabove, in violation of Rule 71 of the Rules. While dealing with somewhat similar proposition in case titled "*Oracle Systems Pakistan (Private) Limited*

versus Pakistan through the Secretary Revenue & Ex Officio chairman Federal Board of Revenue (FBR), Islamabad, etc.” (W.P. No.3876/2021), wherein recovery of the Federal Excise Duty (FED) was effected but the relevant provision for carrying out the same was the Sales Tax Rules 2006, this Court observed as follow:-

*"Under Rule, 71 (1) of the Sales Tax Rules, 2006, on expiry of thirty (30) days from the date on which the Government dues are adjudged, the referring authority shall deduct the amount from any money owing to the person whom such amount is recoverable and which may be at the disposal or in the control of such officer. The referred provision provides for adjustment by way of deduction by any officer, who is holding money on account of the person from whom the tax recovery is to be made. Further, manner for recovery is provided in Rule 71 (2) which inter-alia includes attaching the bank account of the defaulter. Rules 72, 73, 74, 75 and 76 provide other ways of recovering the default liability. Rule 77 *ibid* provides for the mode of service of notices by laying down that the notices shall be served by tendering or sending them by registered post or courier service, to the person for whom these are intended or to his agent, at his last known address or if the same cannot be provided in clause (a), by affixing it on the notice board in the office of the Recovery Officer. There are other ancillary provisions regarding attachment and sale of immovable property, however, since they are not applicable to the facts and circumstances of the case, hence no discussion is required with respect to the same."*

Relying on the same judgment, this Court also decided on the same basis case titled "*Attock Refinery Limited versus Federation of Pakistan, etc.” (W.P. No.2321/2022).*

6. Admittedly, the period of 30-days was not allowed to lapse or expire before initiation of the recovery process and the modalities mentioned in Rule 71 *ibid* were also not followed as required under the law inasmuch as the judgment of the Appellate Tribunal Inland Revenue was handed on 28.09.2021 and recovery was effected on the same day which action on part of the respondents clearly violates Rule 71 of the Rules.

7. For the above reasons, the instant petition is **allowed** and impugned action of effecting recovery from the Bank accounts of the petitioner without

complying with Rule 71 *ibid* and other provisions mentioned hereinabove is declared to be without lawful authority and accordingly **set-aside**.

8. The amount unlawfully recovered from the Bank accounts of the petitioner shall be refunded/reimbursed to the petitioner within 30-days.

(AAMER FAROOQ)
JUDGE

M.Shah/.