

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

W.P No. 1281/2019

M/s Ch. Abdul Latif & Sons (Private) Limited

Versus

Capital Development Authority, Islamabad through its Chairman
etc.

Petitioner by: Mr. Rahat Shaheen Khokhar,
Advocate.

Respondents No. 1 & 2 by: Mr. Jahangir Khan Jadoon,
Advocate.

Respondents No. 3 to 5 by: Syed Ishfaq Hussain Naqvi,
Advocate.

Date of Decision: 04.02.2020.

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MOHSIN AKHTAR KAYANI J. Through this writ petition,

the petitioner has prayed for the following reliefs:-

“That the Respondent No. 01 [CDA] be directed to deposit the applicable sales tax before the competent authority against the construction services received from petitioner.

That the imposition of sales tax on petitioner by the Respondent No. 05 against the construction services so provided to CDA may be declared as illegal.

That the Respondent No.04 may be directed to return back the coercively recovered amount in this regard.

That any other relief which this Honorable Court deem fit and proper in the nature and circumstances of the petition be awarded.”

2. Learned counsel for the petitioner contends that petitioner is a private company limited by shares and involved in the business of providing construction services to its clients; that petitioner company entered into a contract agreement of infrastructure development works of Park Enclave, Islamabad with Capital Development Authority on 08.08.2014, however, at the time of signing of the contract, there was no sales tax on construction

services; that w.e.f. 01.07.2015, the sales tax on construction services @16% was imposed by the competent authority vide S.R.O No. 495(I)/2016, dated 04.07.2016, which was reduced to 05% subject to non-entitlement of the input tax adjustment; that respondent No. 5/Deputy Commissioner Inland Revenue, Islamabad has issued the recovery notice under Section 48(1)(b) of the Sales Tax Act, 1990 read with Rule 71(2)(b) & (d) of the Sales Tax Rules, 2016 and directly recovered the amounts of the petitioner's company from its Directors; that petitioner has raised/issued eight (08) different invoices to the respondent No. 1/CDA, who while making payment against two (02) invoices has remitted the whole amount of sales tax @5% directly to FBR, partial payment, however, the remaining sales tax payments against all other invoices are pending till date; that due to this act of the Capital Development Authority, i.e. non-payment of relevant sales tax, the petitioner has received certain notices from respondent No. 5 for payment of sales tax against the construction services, which is the liability of CDA; that all actions of respondent No.5 are illegal and sales tax could only be recovered from CDA.

3. Conversely, learned counsel for CDA/respondents No.1&2 contends that petitioner company has alternate remedy for filing of representation before respondents No. 1 & 2 in terms of Clauses 67, 67.1 and 67.2 for amicable settlement and arbitration, and as such writ is not competent. It has further been contended that it is the responsibility of the petitioner company to charge and pay the sales tax on construction services provided and rendered with effect from 1st July 2015 under entry at Serial No. 5 of the table to the Islamabad Capital Territory (tax on services) Ordinance, 2001 read with SRO No. 495(1)/2016, dated 04.07.2016, and any letter or clarification cannot override the statutory provisions.

4. On the other hand, learned counsel for the respondents No. 3 to 5/FBR contends that instant writ is not competent as the alternate remedy for filing of appeal against the order dated 26.02.2019 has already been availed by the petitioner company by way of appeal and order in original has been passed, which was assailed by the petitioner before Commissioner of appeals and the matter was remanded to the Assistant Commissioner Inland Revenue and another order in original was passed, which was again assailed before Commissioner Inland Revenue Appeals, Islamabad and the Commissioner Inland Revenue (CIR) again remanded the matter to the Department to decide afresh vide order dated 15.04.2019.

5. Arguments heard and record perused.

6. Perusal of record reveals that petitioner company entered into a contract with Capital Development Authority for development of infrastructure of the Park Enclave, Islamabad dated 08.08.2014, the said company was served notice by the Commissioner Inland Revenue for payment of sales tax on construction services and proceedings were initiated against the petitioner company and its Directors, however, petitioner has assailed the said notice and proceedings before this Court mainly on the ground that it is the responsibility of the Capital Development Authority to pay the sales tax on the said services, which have been denied by the CDA on the ground that any dispute in implementing the terms and conditions could only be settled by alternate dispute mechanism, however, at this stage, it was the stance of the Federal Board of Revenue that Show Cause Notice was issued to the petitioner company and subsequently order in original No. 29/ST/2018-19 was passed by Assistant Commissioner vide order dated 26.02.2019 against the petitioner company, which was assailed by the petitioner company before the

Commissioner Inland Revenue in terms of Section 45 of the Sales Tax Act, 1990, whereby their appeal was allowed and matter was remanded to Department with direction to decide afresh, however, another order in original was passed and the petitioner has assailed the same before the Commissioner Inland Revenue, who again remanded the matter to the Department, which is now pending and as such above referred background spells out that the petitioner company has already invoked the alternate remedy provided under the law, which is part of self-contained mechanism and it defines the forum for determination of such type of question. In such scenario, the writ petition filed by the petitioner is not maintainable. Reliance is placed upon case law reported as **2014 PTD 370 [Sindh High Court] (Messrs Al Amna International through Proprietor and others Vs. Federation of Pakistan through Secretary/Chairman, Federal Board of Revenue and others), 2014 PTD 552 [Peshawar High Court] (Messrs Associated Industries Ltd. Vs. Federation of Pakistan through Secretary Economic Affairs and 2 others), 2007 PTD 501 [Karachi High Court] (Pak Suzuki Motor Company Ltd. through Sr. General Manager (I&LP, Karachi Vs. Secretary Revenue Division, Government of Pakistan through Member Customs, Islamabad and another), 2003 PTD 2722 [Supreme Court of Pakistan] (Messrs HighNoon Laboratories Vs. Assistant Collector, Sales Tax and Central Excise and others), 2013 PTD 1304 [Lahore High Court] (Basit Campus Development and Management Company through Authorized, Representative Vs. Government of the Punjab through Secretary, Excise and Taxation Department, Punjab, Lahore and another), 2018 PTD 654 [Islamabad High Court] (Wi-Tribe Pakistan Ltd. Vs. Deputy Commissioner Inland Revenue and others).**

7. In view of case laws cited above, I am of the view that instant matter could have been agitated before the Appellate forum provided under the law, therefore, instant writ petition is not maintainable and same is hereby **dismissed.**

(MOHSIN AKHTAR KAYANI)
JUDGE

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