

Form No: HCJD/C-121.

JUDGEMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P. No. 1862 of 2013

M/s Shaheen Pipe Industry.

Vs

Federation of Pakistan through its Secretary Revenue Division, etc.

DATE OF HEARING: 28.08.2019.

PETITIONER BY: Sikandar Naeem Qazi, Advocate.

RESPONDENTS BY: Syed Muhammad Tayyab, DAG.
Dr. Farhat Zafar, Advocate.
Mr. Kamil Hayat, Advocate for
respondent no.5.

ATHAR MINALLAH, CJ.- The petitioner through this petition has assailed order, dated 12.04.2013, passed by the learned Additional Commissioner (HQ), Large Taxpayers Unit, Islamabad.

2. The learned counsels for the parties have been heard at length. It is an admitted position that the impugned order was passed without giving prior notice to the petitioner Company nor the later was afforded an opportunity of hearing. The learned counsel for the Department has argued that Rule 12 of the Sales Tax Rules, 2006 (hereinafter referred to as the "***Rules of 2006***") empowers the Commissioner to suspend the registration of a registered person without prior notice. The learned counsel for the petitioner Company,

on the other hand, has placed reliance on the judgment of the learned Lahore High Court in case titled: "*Messers Imran Ali Lubricants through Managing Partner vs. Federation of Pakistan through Secretary Revenue Division, Islamabad and 3 others*" [2018 PTD 1042] in support of his contention that the power vested in the Commissioner to suspend the registration without prior notice is ultra vires the Constitution, particularly Article 10-A thereof.

5. The learned counsels have been heard and the record perused with their able assistance.

6. It is an admitted position that the registration of the petitioner Company was suspended through the impugned order, dated 12.04.2013, without giving prior notice. It is also not denied that the requirements of procedural fairness and due process were not complied with before passing the impugned order which has the effect of suspending the business of the petitioner Company. With the assistance of the learned counsels, the judgment rendered by the learned Lahore High Court in case titled "*Messers Imran Ali Lubricants through Managing Partner vs. Federation of Pakistan through Secretary Revenue Division, Islamabad and 3 others*" [2018 PTD 1042] has been carefully perused. This Court concurs with the judgment wherein section 21(2) of the Sales Tax Act, 1990 and Rule 12 of the Sales Tax Rules, 2006 have been interpreted in the light of the Constitutional provisions and the precedent law. There is no cavil to the proposition that after insertion of Article 10-A in the Constitution, it has to be read in every statute. Rule 12 of the Rules of 2006 has been framed in exercise of powers vested in the Federal Government and,

therefore, the latter is not competent to make any rule which has the effect of violating the fundamental right guaranteed under Article 10-A of the Constitution.

7. For what has been discussed above, this petition is allowed and consequently the impugned order, dated 12.04.2013, is hereby set aside. The Commissioner, however, would be at liberty to proceed strictly in accordance with the law. In case the latter intends to suspend the registration of the petitioner Company then a formal notice will be required to be issued followed by affording a reasonable opportunity of hearing to an authorized representative.

(CHIEF JUSTICE)

Saeed.