

JUDGMENT SHEET

ISLAMABAD HIGH COURT, ISLAMABAD, **JUDICIAL DEPARTMENT**

I.C.A No.57 / 2017

Chief Commissioner LTU, Islamabad, and an-other.

versus

M/s Karim Aziz Industries Pvt. Limited.

I.C.A No.56 / 2017

Chief Commissioner LTU, Islamabad, and an-other.

versus

Karachi Steel Re-Rolling Mills Managing Partner.

I.C.A No.23 / 2017

Chief Commissioner LTU, Islamabad, and an-other.

versus

Mat Cast Pvt. Limited.

Appellants by: Syed Ishfaq Hussain Naqvi, Advocate.

Respondents by: Mr. Waqas Ali Malik, Advocate.

Date of Hearing: 20.12.2022

MOHSIN AKHTAR KAYANI, J: By way of this common judgment we intend to decide these Intra Court Appeals arising out of same order passed in Civil Suits, whereby, the application under Order XXXIX Rule, 1 & 2 CPC was allowed.

2. Learned counsel for the appellant Chief Commissioner LTU, Islamabad, contends that the respondents companies have filed Civil Suits and assailed the vires of Sales Tax General Order No.18/2016 and claim that the appellant has no lawful authority or jurisdiction to alter, add or enhance the Sales Tax liability or restrict the permissible input adjustment of Steel Melters / Re-rollers through Sales Tax General Order issued in purported exercise of powers under Rule 58 H (2C) of Sales Tax special

procedure Rules, 2007. It has been further contend that the learned Judge in Chamber has allowed the CM No.1 of 2016 vide order dated 21.10.2016 and restrained the appellant from assessing Sale Tax liability on the basis of Sale Tax General Order No. 18 of 2016 for taking any adverse action against the respondents on the basis of referred order. The respondents are further declared entitled to claim input adjustment for Sales Tax on the basis of earlier law till the final decision of suit.

3. Learned counsel for the appellant has been confronted with the status of the Civil Suits, whereby, it has been conceded that till date the suits have not been concluded, however, at this stage this court has requisitioned the record which reveals that the appellants have been proceeded ex-parte, vide order dated 08.05.2017, and till date further evidence has not been recorded, rather the Civil Suits have been dismissed for non-prosecution, moreover, later on restored and are now fixed for 13.02.2023 for ex-parte evidence, whereby, last opportunity has been granted to the respondents side for recording of evidence. This record position reflects that appellants are no more interested in the lis, whereby, their conduct is apparently against all the norms of legal ethics, who were not defending themselves in the Civil Court, rather, it appears that they are in league with the respondents who have obtained the injunctive order from this court in CM No.01 of 2016, and even the Civil Suits have been transferred to the Civil Court due to change of jurisdiction, further, no one appeared

before the trial court, though, notices were issued, even alternate mode of service was also adopted by learned Civil Court, therefore, at this stage there is nothing left in favor of appellants, who are not able to demonstrate any illegality in the injunctive order, especially, when learned Judge in Chamber has explained legal position in clear words qua the status of Sales Tax Special Procedure Rules, 2007, which are statutory in nature, and the Sales Tax General Order, was a departmental instruction which cannot override the rules. The respondents have demonstrated their *prima facie* case and even they are the persons who will suffer irreparable loss if the injunctive order was not passed.

4. Keeping in view the above position, all these Intra Court Appeals are meritless, hence, stands **DISMISSED**.

5. Before parting with this order, this Court is surprised to observe conduct of the Judicial Officers, who are dealing with Civil Suits in which multiple opportunities were granted to the respondents / plaintiffs for recording of ex-parte evidence with last opportunity, *حتمی موقع، قطعی آخری موقع*, but nothing fruitful was achieved, even notices under Order XVII Rule 3 CPC were also issued. Such kind of laxity reflects that Judicial Officers could not record ex-parte evidence in the Civil Suits since 2017, and the matter is delaying on one pretext or the other. As such, the court as well as parties are equally liable for frustrating the legal procedure provided in Civil Procedure Code. If in a Civil Suit five years have been consumed in recording ex-parte evidence, what can be expected in Civil Suits in which

evidence of both sides is to be recorded. Such like approach is shattering the confidence of citizens of Pakistan on the Judicial System of the Country and is giving rise to multiple problems in the society. The Judicial Officers dealing with the cases should be vigilant to delaying tactics adopted by the parties and should cater them in accordance with law, because it is well settled that justice delayed amounts to justice denied, therefore, copy of this order be transmitted to learned District & Sessions Judge (West), Islamabad to look into the affairs at this own end and sensitize the Judicial Officers to make efforts for timely decisions of cases pending with them.

(ARBAB MUHAMMAD TAHIR)
JUDGE

(MOHSIN AKHTAR KAYANI)
JUDGE

Announced in the open Court on: 28.12.2022

JUDGE

JUDGE

A.Waheed.