

JUDGMENT SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD

WRIT PETITION NO.1760 OF 2021

M/s Rawat Oil & Ghee Mills Private Ltd.

VS.

Additional Commissioner (Audit-I) Inland Revenue, etc.

WRIT PETITION NO.1761 OF 2021

M/s Rawat Oil & Ghee Mills Private Ltd.

VS.

Additional Commissioner (Audit-I) Inland Revenue, etc.

WRIT PETITION NO.1762 OF 2021

M/s Rawat Oil & Ghee Mills Private Ltd.

VS.

Additional Commissioner (Audit-I) Inland Revenue, etc.

WRIT PETITION NO.1763 OF 2021

M/s Rawat Oil & Ghee Mills Private Ltd.

VS.

Additional Commissioner (Audit-I) Inland Revenue, etc.

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Petitioner by : **Mr. Muhammad Imran ul Haq Advocate,
in all petitions.**

Respondents by : **Ali Nawaz Kharal Advocate in all
petitions.**

Date of hearing : **29.03.2023.**

SAMAN RAFAT IMTIAZ, J. Through the instant judgment, I propose to decide the above mentioned cases as similar questions of law and facts are involved.

2. Through these Writ Petitions the Petitioner [M/s Rawat Oil & Ghee Mills Private Limited] has challenged notices dated 30.06.2017, 30.04.2021, 03.05.2021 issued under Section 122(9) ("**Impugned Notices**") of the Income

Tax Ordinance, 2001 (“**Ordinance, 2001**”) for Tax Years 2016-2017, 2017-2018, 2018-2019 and 2019-2020 respectively.

3. The learned counsel for the Petitioner submits that the Petitioner has been exempted under Section 65D of the Ordinance, 2001 despite which the Impugned Notices have been issued alleging wrong claim of tax credit. In respect of the recent pronouncement of the apex Court in the case of *Commissioner Inland Revenue and others v. Jahangir Khan Tareen and others*, 2022 SCMR 92, he submitted that Impugned Notices have been issued by the Additional Commissioner who has no authority to issue such notices under Section 122(5A) of the Ordinance, 2001 therefore the said judgment does not preclude the Petitioner from invoking writ jurisdiction in the facts and circumstances of the instant matter. He submits that even otherwise despite such judgment the Honourable Sindh High Court in case *M/s SKF Pakistan (Pvt.) Limited v. Federation of Pakistan and others* 2023 PTCL 211 has created an exception in the circumstances which are similar to the instant case. He also referred to *K.K. Oil and Ghree Mills Pvt. Ltd. v. FBR etc.* 2016 PTD 2601 wherein this Court held that the power to delegate under Section 210 (1A) cannot be applied to withdrawal of concession under Section 65-D of the Ordinance, 2001. He further submits that the notice does not comply with the essential ingredients of Section 122(5A) as there is no allegation that the assessment order is prejudicial to the interest of revenue.

4. The learned counsel for the Respondents, on the other hand, submits that in light of the case of *Commissioner Inland Revenue and others v. Jahangir Khan Tareen and others*, 2022 PTD 232 all the objections taken by the Petitioner before this Court can be agitated before the relevant forum as only Show Cause Notices have been issued which do not constitute an adverse action. He further submits that the Commissioner is authorized to delegate powers under Section 210 (1A). On merits he submits that even otherwise the power to withdraw the tax credit is available under sub clause (6) of Section 65-D of the Ordinance, 2001.

5. I have heard the learned counsel for the parties and perused the Record.

6. The learned counsel have taken me through the relevant portions of the Judgment of the Honourable Supreme Court in the case of *Commissioner Inland Revenue(Supra)* whereby it has been held that a Show Cause Notice provides reasonable opportunity to the recipient to reply why a particular action as threatened may not be taken against him. Therefore, a show cause notice cannot be presumed to be an adverse order and interference by this Court in Constitutional jurisdiction at such stage should be avoided and relegating the parties to the proceedings before the concerned authority should be the normal rule. The apex Court has explained that a High Court may take up writs challenging Show Cause Notices if it is found barred by law or any abuse of the process. Abuse of process has also been explained to mean to use of legal process for an improper purpose incompatible with the lawful function of the process by one with ulterior motive.

7. In the instant case the Impugned Notices have called into question allegedly wrong claim of credit and creation of refund out of minimum tax. The Petitioner has not alleged that such notices are barred by any law nor has any ulterior motive been attributed to the Respondent No. 1 therefore issuance of the Impugned Notices does not constitute an abuse of the process. The objections raised by the Petitioner before this Court against the issuance of the Impugned Notices may be agitated in response to the said Show Cause Notices and the remedies available within the hierarchy of the Department may be availed by the Petitioner in case of any adverse order/action against it. No reason has been shown for departure from the general rule of relegating the parties to the concerned authorities by entertaining a writ petition against a show cause notice.

8. In view of the above, the instant Writ Petitions are **dismissed**.

(SAMAN RAFAT IMTIAZ)
JUDGE