

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

C.P. No.D-3655 of 2012

C.P. No.D-5974 of 2014

C.P. No.D-6019 of 2014

C.P. No.D-546 of 2015

Order with signature of Judge

C.P. No.D-3655 of 2012

Excide Pakistan Ltd.

Vs.

Federation of Pakistan and others

C.P. No.D-5974 of 2014

ENI Pakistan Limited

Vs.

Pakistan and others

C.P. No.D-6019 of 2014

United Energy Pakistan Limited

Vs.

Pakistan and others

C.P. No.D-546 of 2015

Lareal Pakistan (Pvt.) Limited

Vs.

Federation of Pakistan and others

12.11.2018.

M/s Ali Almani and Hyder Ali Khan, Advocates for petitioners
Mr. Kafeel Ahemed Abbasi, Advocate for respondent (Tax
Department).

Mr. Mohammad Zahid Khan, Assistant Attorney General.

ORDER

Mohammad Ali Mazhar, J. In the aforesaid petitions the petitioners have sought the declaration that Section 25 of the Sale Tax Act, 1990 is unconstitutional. They have further sought the declaration that the Commissioner does not have power to select a person for an audit and he can only conduct an audit once the mechanism provided under Section 72B of the Sale Tax Act, 1990 has been complied with. Learned counsel for the petitioners referred to the judgment passed by a learned Divisional Bench of

this Court in the case of Messrs PFIZER PAKISTAN LTD. versus Deputy Commissioner and others (2016 PTD 1429). Relevant portion of the judgment is reproduced as under:-

6.----- Thus after examining the provisions of Sections 120(1A), 122(5), 177 and 214C of the Income Tax Ordinance, 2001, it clearly appears that the law visualizes two distinct situations for conducting audit. The first is provided under Section 120(1A) which, in our view, is based on exercise of discretion on the part of the Commissioner and the other is the power of the Board to select persons or class of persons under Section 214C. We are therefore of the view that by invoking Section 120(1A) any person can be called upon by the Commissioner in his discretion to submit accounts for audit if reasonable grounds exist for doing so. Hence no case for interference under Article 199 is made out.”

Learned counsel for the petitioner submits that though their cases attracting to the provisions of the Sale Tax Act, 1990 but in the aforesaid judgment the learned Divisional Bench has already decided the issue on the similar provisions relating to the selection for audit provided in the Income Tax Ordinance, 2001. In support of their contention they also referred to the judgment of Islamabad High Court in the case of PAKISTAN TELECOMMUNICATION COMPANY LTD. VS. FEDERATION OF PAKISTAN (2016 PTD 1484) and the judgment of Lahore High Court in the case of FEDERAL BOARD OF REVENUE and others Vs. Messrs CHENONE STORES LTD. (2018 PTD 208) and according to them precisely in both above judgments, similar issue has been dealt with and decided.

Mr. Kafeel Ahmed Abbasi, learned counsel appearing for the Tax Department has conceded to the arguments and confirms that the same issue has been decided in the above judgments.

In view of the above, aforesaid petitions are disposed of in the same terms as contained in the aforesaid judgments. Office is directed to place copy of this order in connected petitions.

J U D G E

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