

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

Order with signature of Judge

Present: **Muhammad Ali Mazhar** and **Agha Faisal, JJ.**

CP D-3170 of 2015	:	M/s Din Textile Mills Ltd. vs. Federation of Pakistan & Others
CP D-655 of 2015	:	Gadoon Textile Mills Ltd. & another vs. Federation of Pakistan & Others
CP D-1259 of 2015	:	M/s. Surriya Textile Mill Ltd. vs. Federation of Pakistan & Others
CP D-1260 of 2015	:	M/s. Amin Textile Mills (Pvt.) Ltd. vs. Federation of Pakistan & Others
CP D-1438 of 2015	:	Khas Textile Mills (Pvt.) Ltd. vs. Federation of Pakistan & Others
CP D-3276 of 2015	:	Fazal Cloth Mills Limited vs. Federation of Pakistan & Others
CP D-3364 of 2015	:	Kohinoor Textile Mills Limited vs. Federation of Pakistan & Others
CP D-3372 of 2015	:	Janana De Malucho Textile Mills Limited vs. Federation of Pakistan & Others
CP D-3373 of 2015	:	Rehman Cotton Mills Limited vs. Federation of Pakistan & Others
CP D-3374 of 2015	:	Indus Dyeing & Manufacturing Co. Ltd. vs. Federation of Pakistan & Others
CP D-3421 of 2015	:	Bhanero Textile Mills Limited vs. Federation of Pakistan & Others
CP D-3469 of 2015	:	Babri Cotton Mills Limited vs. Federation of Pakistan & Others
CP D-3470 of 2015	:	Idrees Textile Mills Ltd. vs. Federation of Pakistan & Others
CP D-3471 of 2015	:	Premium Textile Mills Ltd. vs. Federation of Pakistan & Others
CP D-3617 of 2015	:	Gadoon Textile Mills Ltd. & Another vs. Federation of Pakistan & Others
CP D-3620 of 2015	:	Dewan Textile Mills Limited vs. Federation of Pakistan & Others
CP D-3638 of 2015	:	M/s. Suraj Cotton Mills Limited vs.

		Federation of Pakistan & Others
CP D-3639 of 2015	:	M/s. Diamond International Corporation Limited vs. Federal Board of Revenue & Others
CP D-3643 of 2015	:	M/s. Hira Textile Mills Limited vs. Federation of Pakistan & Others
CP D-3732 of 2015	:	Gul Ahmed Textile Mills Ltd. vs. Federal Board of Revenue & Others
CP D-3753 of 2015	:	M/s. Saritow Spinning Mills Limited vs. Federal Board of Revenue & Others
CP D-3754 of 2015	:	M/s. Ejaz Spinning Mills Limited vs. Federation of Pakistan & Others
CP D-3755 of 2015	:	Quetta Textile Mills Limited vs. Federation of Pakistan & Others
CP D-3848 of 2015	:	M/s. Sapphire Fibres Limited vs. Federation of Pakistan & Others
CP D-3849 of 2015	:	Sapphire Textile Mills Limited vs. Federal Board of Revenue & Others
CP D-3850 of 2015	:	M/s. Feroze1888 Mills Limited vs. Federal Board of Revenue & Others
CP D-3851 of 2015	:	N.P. Cotton Mills Limited vs. Federal Board of Revenue & Others
CP D-4285 of 2015	:	Wizitex Time Industries Pvt. Limited vs. Federation of Pakistan & Others
CP D-4417 of 2015	:	Master Textile Mills Limited vs. Federation of Pakistan & Others
CP D-4391 of 2016	:	Pakistan Oil Mills (Pvt.) Limited vs. Federation of Pakistan & Others
Advocate for petitioners	:	Mr. Taimur Ahmed, Advocate Mr. Faiz Dorani, Advocate Mr. Mahmood Abbas, Advocate Mr. Anas Makhdoom, Advocate Mr. Ahmed Faraj, Advocate.
Advocate for respondents	:	Mr. Kafeel Ahmed Abbasi, Advocate Mr. Khalil Ahmed Dogar, Advocate Ms. Masooda Siraj, Advocate. Mr. Shakeel Ahmed, Advocate.
Date of hearing	:	04.12.2019
Date of announcement	:	04.12.2019

ORDER

Muhammad Ali Mazhar J. These are connected petitions wherein the petitioners have challenged the show cause notices as well as the demand notices issued by the custom authorities with respect to deduction of withholding tax under the Income Tax Ordinance, 2001. On the last date of hearing, the learned counsel for the petitioners relied upon the circular/clarification issued by the Federal Board of Revenue to the Customs authority, in interpretation of SRO 1125(1)/2011 amended through SRO 154(1)/2013, with regard to manufacturing of the textile goods including jute, carpets, leather, sports and surgical goods sectors fulfilling the conditions of SRO 1125(1)/2011. It was further argued that the clarification was issued for reduction of the applicable rate to one percent, under section 148 of the Income Tax Ordinance, 2001, that will be applicable on such imports. After hearing the arguments of the learned counsel for the petitioners, the learned counsel for the tax department requested for some time to seek instructions.

Today, Mr. Kafeel Ahmed Abbasi, Advocate, Ms. Masooda Siraj, Advocate, Mr. Khalil Ahmed Dogar, Advocate and Mr. Shakeel Ahmed, Advocate, appearing for the tax department in these cases, submitted that so far as the clarification is concerned the same has been issued by the FBR and there is no question of denial thereof as the same is of a binding nature, however, since show cause notices have been issued, and in some cases demand notices have also been issued, therefore the appropriate procedure would be for the petitioners to appear before the concerned authority and place their

argument, bolstered with the admission / submission made on behalf of the Customs department in Court today, so that the appropriate forum may render the concluding orders. Learned counsel for the petitioners agree to appear before the authority, which issued the show cause notices, in view of the statement of the learned counsel for the Customs department.

We have already determined in a recent Division Bench Judgment in the case of *Dr. Seema Irfan*¹ (authored by one of us, *Muhammad Ali Mazhar J.*) that a show cause notice may not ordinarily be interfered with unless it is demonstrably issued without jurisdiction, amounts to an abuse of process of law or is totally non est. While we remain cognizant of the law, it is also within our contemplation that the learned counsel for the respondents have accepted the interpretation of the FBR clarification being argued on behalf of the petitioners, in response to our specific query recorded vide order dated 27.11.2019.

In view hereof these petitions are disposed off with the directions to the petitioners to appear before the concerned authority and present their defense and the authority concerned is directed to decide the fate of the show cause notices / demand notices after providing ample opportunity to the petitioners and taking into account the clarification issued by the FBR and the statement of the Customs department, recorded supra. It is further directed that until

¹ *Dr. Seema Irfan & Others vs. Federation of Pakistan & Others* and connected matters reported as 2019 PTD 1678 and PLD 2019 Sindh 516.

the show cause / demand notices are decided by the competent authority, no coercive action shall be taken against the petitioners. And further that in the event of any adverse order being passed by the authority concerned, a further two weeks' time will also be allowed to the petitioners to file the appeals before the appropriate forum and during that period also no coercive action shall be taken by the department against the petitioners.

All petitions listed above are disposed of in the above terms.

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