ORDER SHEET

IN THE HIGH COURT OF SINDH AT KARACHI

Suit No.2780, 2781 & 2782 of 2016

DATE	ORDER WITH SIGNATURE OF JUDGE

Suit No.2780/2016.

1. For hearing of CMA No.18050/16 (U/O 39 Rule 1 & 2 CPC)
2. For Exparte order against Defendant No.4.

Suit No.2781/2016.

For hearing of CMA No.18053/16 (U/O 39 Rule 1 & 2 CPC)

Suit No.2782/2016.

For hearing of CMA No.18056/16 (U/O 39 Rule 1 & 2 CPC)

23.10.2018

Mr. Jawaid Farooqui, Advocate for Plaintiff in all three Suits..
Mr. Muhammad Aqeel Qureshi, Advocate for Defendants.

In all these three Suits, Plaintiff has impugned Orders passed in departmental proceedings, whereby, the demand of Workers Welfare Fund was upheld. Learned Counsel for the Plaintiff submits that notwithstanding these proceedings, the Plaintiff had independently impugned such levy through C.P Nos.3970, 3971 & 3972 of 2015 and through Judgment dated 19.12.2016 while following the Judgment of the Hon'ble Supreme Court in the case reported as ***Workers Welfare Fund (WWF) Ministry of Human Resources Development, through its Chairman and another v. East Pakistan Chrome Tannery (Pvt.) Ltd.*** (**PLD 2017 SC 28**), the Petitions were allowed; but despite this the proceedings were kept pending in the Department Hierarchy and demand notices have been issued. On issuance of notice, written statement has been filed on behalf of the Commissioner Inland Revenue and it is stated that the Order was passed prior to passing of the Judgment in the said Petitions.

Be that as it may, since the controversy now stands decided by the Hon'ble Supreme Court as well as a Division Bench of this Court, there is nothing left any further to be decided except decreeing the listed Suits. Para 22 and 23 of the Judgment of the Hon'ble Supreme Court reported as ***Workers Welfare Fund (WWF) Ministry of Human Resources Development, through its Chairman and another v. East Pakistan Chrome Tannery (Pvt.) Ltd.*** (**PLD 2017 SC 28**) deals with the controversy and reads as under;

> 22. As we have established from the discussion above that none of the subject contributions/payments made under the Ordinance of 1971, the Act of 1976, the Act of 1923, the Ordinance of 1968, the Act of 1968 and the Ordinance of 1969 possess the distinguishing feature of a tax, i.e. a common burden to generate revenue for the State for general purposes, instead they all have some specific purpose, as made apparent by their respective statutes, which removes them from the ambit of a tax. Consequently, the amendments sought to be made by the various Finance Acts of 2006, 2007 and 2008 pertaining to the subject contributions/ payments do not relate to the imposition, abolition, remission, alteration or regulation of any tax, or any matter incidental thereto (tax). We would like to point out at this juncture that the word 'finance' used in Finance Act undoubtedly is a term having a wide connotation, encompassing tax. However not everything that pertains to finance would necessarily be related to tax. Therefore, merely inserting amendments, albeit relating to finance but which have no nexus to tax, in a Finance Act does not mean that such Act is a Money Bill as defined in Article 73(2) of the Constitution. The tendency to tag all matters pertaining to finance with tax matters (in the true sense of the word) in Finance Acts must be discouraged, for it allows the legislature to pass laws as Money Bills by bypassing the regular legislative procedure under Article 70 of the Constitution by resorting to Article 73 thereof which must only be done in exceptional circumstances as and when permitted by the Constitution. The special legislative procedure is an exception and should be construed strictly and its operation restricted. Therefore, we are of the candid view that since the amendments relating to the subject contributions/ payments do not fall within the parameters of Article 73(2) of the Constitution, the impugned amendments in the respective Finance Acts are declared to be unlawful and ultra vires the Constitution.
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> 23. There is another aspect of the matter which requires due attention. No doubt the feature of having a specific purpose is a characteristic of a fee, which the subject contributions/ payments possess as discussed in the preceding portion of this opinion. However, there are certain other characteristics of a fee, such as quid pro quo, which must be present for a contribution or payment to qualify as a fee. This was the main argument of the learned counsel who categorized the subject contributions in the nature of a tax, that they (the contributions) lacked the element of quid pro quo or in other words the benefit of the contribution did not go to the payers. The industrial establishments or employers etc. were liable to pay the contribution but they were not the beneficiaries of the purpose for which such contributions were being made; the beneficiaries were their employees or workers etc. Mr. Rashid

Anwar attempted to argue that the benefit need not be direct and can be indirect, therefore although the employees were directly benefited by contributions made to the Employees' Old-Age Benefit Fund as they received the disbursements, the employers received an indirect benefit in that this results in happier employees which ultimately leads to greater productivity. Whilst this may be true, albeit a strained argument, the attempt of the learned counsel challenging the legality of the amendments in the Finance Acts has all along been to categorize the contributions/ payments as a fee, which would mean that they were not a tax. While a fee is obviously not a tax, there was absolutely no need to try and squeeze the contributions/payments into the definition of a fee, when all that is required is to take them out of the ambit of a tax. We may develop this point further; although Article 73(3)(a) of the Constitution states that a Bill shall not be a Money Bill if it provides for the imposition or alteration of a fee or charge for any service rendered, this does not mean that if a particular levy/ contribution does not fall within Article 73(2) it must necessarily fall within Article 73(3). Sub-Articles (2) and (3) are not mutually exclusive. There may very well be certain levies/contributions that do not fall within the purview of Article 73(3) but still do not qualify the test of Article 73(2) and therefore cannot be introduced by way of a Money Bill, and instead have to follow the regular legislative procedure. The discussion above that the subject contributions/ payments do not constitute a tax is sufficient to hold that any amendments to the provisions of the Ordinance of 1971, the Act of 1976, the Act of 1923, the Ordinance of 1968, the Act of 1968 and the Ordinance of 1969 could not have been lawfully made through a Money Bill, i.e. the Finance Acts of 2006 and 2008, as the amendments did not fall within the purview of the provisions of Article 73(2) of the Constitution.

Accordingly, the listed Suits are decreed in the above terms, by setting aside the demands / levy of Workers Welfare Fund pursuant to orders impugned herein.

Office to prepare decree accordingly.

J U D G E

Ayaz P.S.