

**ORDER SHEET  
IN THE HIGH COURT OF SINDH AT KARACHI**

**C.P. No. D-2360 of 2019** alongwith  
C.P No.D- 6627 & 08 of 2020

Date	Order with signature of Judge
	<p><b><u>CP No.D-2360/2019.</u></b> 1. For hearing of CMA No. 10562/19 (stay) 2. For hearing of main case.</p> <p><b><u>CP No.D-6627/2020.</u></b> 1. For hearing of CMA No. 28324/20 (stay) 2. For hearing of main case.</p> <p><b><u>CP No.D-08/2020.</u></b> 1. For hearing of CMA No. 41/20 (stay) 2. For hearing of main case.</p> <p style="text-align: center;">-----</p>

**03.05.2021.**

Mr. Muhammad Anas Makhdoom alongwith Mr. Ahmed Faraj, Advocates for Petitioners.  
Mr. Shahid Ali Qureshi, Advocate for respondent.  
Mr. Ameer Bakhsh Metlo, Advocate for Respondent.  
Mr. Imran Iqbal holding brief for Mr. Khalid Rajpar, Advocates for respondents.  
Mr. Pervaiz A. Memon, Advocate for respondent.  
Ms. Nuzhat Shah, Advocate for respondent.  
Mr. Rana Sakhawat Ali holding brief for Dr. Shahab Imam, Advocate for respondent.  
Mr. Kafeel Ahmed Abbasi, DAG.

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All Petitioners were aggrieved by the action of Respondents / Commissioner Inland Revenue concerned, whereby, issuance of exemption certificate(s) in terms of Section 65D of the Income Tax Ordinance, 2001 read with Section 148 and 159 ibid further read with SRO 947(I)/2008 dated 5.9.2008 was refused on the ground that in case of *tax credit* under Section 65D no exemption certificate can be granted. On 09.04.2019 in C.P No.D-2360/2019, on 23.12.2020 in C.P No.D-6627/2020 and on 02.01.2020 in C.P No.D-08/2020 by way of ad-interim order(s), the consignment(s) imported by the Petitioners were allowed release against furnishing of Bank Guarantee(s) of the disputed amount with the concerned Collectorate.

It appears that this controversy went before the Hon'ble Supreme Court pursuant to a judgment of the learned Lahore High Court as well as the learned Islamabad High Court which now

stands decided in the case reported as ***H. M. Extraction Ghee & Oil Industries (Pvt) Ltd V. Federal Board of Revenue (2019 S C M R 1081)***. The Petitioners in view of such judgment seek discharge of Bank Guarantees.

Learned Counsel for the Petitioners submits that though the Hon'ble Supreme Court has concurred with the view of the Department; however, at the same time since subsequently Tax Returns have been filed and it is the case of the Petitioners that the amount already paid is an excess of their liability; hence, the Bank Guarantees are not to be discharged. Copies of returns have also been filed in some cases and reliance has been placed on Para Nos. 18 & 19 of the said judgment for seeking disposal of these matters in view thereof. Para 18 & 19 reads as under:-

"18. The foregoing aspect of the matter has indeed caused us grave concern. The legal position may be what it is and as described above, but one consequence is that the State does seem to have gathered, and accumulated, sums to which it is (at least on the record before us) not entitled. In other words it has been enriched, even if temporarily, in an unfair manner at the expense of the taxpayer. (This is not, we may clarify, a reference to the well-known doctrine of unjust enrichment which, strictly speaking, may not be applicable here.) We are reminded here of what was said by this Court in Pfizer Laboratories Ltd. v. Federation of Pakistan and others PLD 1998 SC 64 ("Pfizer case"). The facts there were that the taxpayer had made payments of tax which it was not obliged to on account of an exemption. Its claim for a refund was however rejected as being barred by limitation. After considering a number of cases it was, inter alia, observed as follows (pg. 89; emphasis supplied):

"10. The above resume of the case-law of Indian, English and Pakistani jurisdictions indicates that the latest judicial trend is to deprecate and to discourage withholding of a citizen's money by a public functionary on the plea of limitation or on any other technical plea if it was not legally payable by him ."

The continued retention of the advance income tax collected from the taxpayers before us can, it seems to us, not unfairly be characterized as the "withholding of a citizen's money by a public functionary on [a] technical plea", when, practically speaking, there never was any (ultimate) liability to pay tax.

19. In the Pfizer case, it was possible for this Court to remand the matter to the concerned authority for reconsideration of the taxpayer's claim. Here, we have been unable to conclude that the 2001 Ordinance offers a similar or equivalent solution to what does appear to be a genuine practical grievance. However, it seems to us that the following directions can, and ought to, be given: (1) in respect of the tax years already concluded, if the taxpayer has filed its return and, as on the date of this judgment, no amendment (or other similar) proceedings have been launched or are pending in respect of such return, then the amounts collected under section 148 must be refunded in full within 30 days of the date hereof and an appropriate report filed with the Office of this Court;

and (2) in respect of the present (and future, if applicable) tax year(s) (or any past tax year in respect of which a return has not yet been filed), if no amendment (or other similar) proceedings are launched within 120 days of the filing of the relevant return, then the amounts collected under section 148 must be likewise refunded within 30 days thereof. A failure to abide by these directions may result in suitable action being taken against the concerned Member FBR and Commissioner Inland Revenue.”

Today, Counsel for Inland Revenue Department submits that some orders have already been passed in Civil Suits on identical facts and this Court may pass appropriate orders to the extent of return and or discharge of Bank Guarantee(s), whereas, the department reserves its right to examine the respective Tax Returns and may seek passing of amended assessment orders in accordance with law.

In view of hereinabove facts and circumstances of the case, since the controversy has been decided by the Hon’ble Supreme Court; therefore, all listed petitions are disposed of in terms of the said judgment and the concerned Commissioner Inland Revenue shall act accordingly; whereas, the concerned Collectorate(s) are directed to discharge and or release the pending Bank Guarantees to the Petitioners.

Office to place copy of this order in all connected files.

Ayaz P.S.

**Judge**

**Judge**