

IN THE HIGH COURT OF SINDH AT KARACHI

Present:
Muhammad Junaid Ghaffar, J.
Agha Faisal, J.

CP D 5482 of 2017

Nestle Pakistan Limited
vs.
The Federal Board of Revenue & Others

(And connected matters, particularized in the Schedule¹ hereto.)

For the Petitioners : Mr. Hyder Ali Khan, Advocate
Mr. Imtiaz Rashid Siddiqui, Advocate
Mr. Sami-ur-Rehman Khan, Advocate
Mr. Tasawwar Hashmi, Advocate
Mr. Fahad Ali Hashmi, Advocate
Mr. Saifullah Sachwani, Advocate
Mr. Vivek Harani, Advocate

For the Respondents : Mr. Shahid Ali Qureshi, Advocate
Dr. Shah Nawaz Memon, Advocate
Mr. Khalid Rajpar, Advocate
Mr. Kafeel Ahmed Abbasi, Advocate
Ms. Fozia M. Murad, Advocate
Mr. Syed Mohsin Imam Wasti, Advocate
Mr. Mohabat Hussain Awan, Advocate
Mr. Aatif Awan, Advocate
Mr. Muhammad Bilal Bhatti, Advocate
Mr. Muhammad Rashid Arfi, Advocate
Mr. Parvaiz Ahmed Memon, Advocate
Mr. Bilal Memon, Advocate
Mr. Qaim Ali Memon, Advocate
Ms. Bushra Zia, Advocate
Mr. Irfan Mir Halepota, Advocate

Mr. Syed Yasir Ahmed Shah
Assistant Attorney General

Date/s of hearing : 07.11.2022 & 15.11.2022

Date of announcement : 15.11.2022

¹ The Schedule hereto shall be read as an integral constituent hereof.

JUDGMENT

Agha Faisal, J. The Petitioners have impugned respective notices / constituents thereof, issued by the officers of Collectorate of Customs (Adjudication) (hereinafter referred to as “Adjudication”), on the ground that after release / clearance of their import consignments, Adjudication had no jurisdiction to assess, recover or adjudicate any alleged short levy of income tax and sales tax; and the jurisdiction, if any, in this regard vests with the Inland Revenue department.

The present petitions were argued on this solitary issue² and were allowed to the extent of our short order announced in Court at the conclusion of the final hearing, on 15.11.2022. These are the reasons for our short order.

Factual context

2. Briefly stated, the petitioners had imported consignments, which had been assessed, cleared and released by the Customs department. Post accrual of a significant period of time thereafter, Adjudication issued notices alleging short recovery of income tax / sales tax and sought to adjudicate and recover the same. It was the petitioners’ case that post clearance, the assessment, adjudication and recovery of any discrepancy in income tax / sales tax falls within the domain of Inland Revenue and Adjudication is devoid of any jurisdiction in such regard, hence, these petitions.

Respective arguments

3. Per petitioners’ learned counsel³, there is separate provenance of customs, income tax, sales tax and excise in the Constitution and the said segments operate in different fields. It was argued that chargeability, assessment and recovery are individual and distinct functions conferred by statute; while Customs have been bestowed the power to collect taxes at the import stage, such power does not include any power to assess, adjudicate

² It merits mention that no other issue was placed / agitated before this Court, irrespective of the pleadings in the respective petitions.

³ Spearheaded by Mr. Hyder Ali Khan, Advocate. The arguments were complimented by Mr. Imtiaz Rashid Siddiqui, Advocate and adopted by the remaining learned counsel for the petitioners.

and recover income tax and sales tax post clearance of the consignments. It was concluded that in the manifest presence of specific statutory provisions for assessment, adjudication and recovery of income tax / sales tax in the respective parent statutes⁴, no interference by Adjudication was merited in respect of cleared past consignments.

4. The respondents' learned counsel⁵ articulated that the instruments / constituents thereof under scrutiny were valid as they had been issued in due conformity with the law. Their pivotal contention was that addition⁶ of the word *taxes* in sections 32⁷ and 179⁸ of the Customs Act 1969 conferred concurrent jurisdiction upon the Customs department to assess, recover or adjudicate any alleged short levy of income tax and sales tax, even post release / clearance of consignments.

Scope of determination

Absence of any notification

5. Heard and perused. At the very onset, we had required the respondents' learned counsel to assist us with any notification / instrument conferring jurisdiction / power upon Adjudication to assess, adjudicate or recover any alleged short levy of income tax and sales tax post release, however, the learned departmental counsel and Assistant Attorney General remained unable to provide any such instrument. On the contrary, it was submitted that no such sub-statutory instrument was needed as the law⁹ itself conferred the requisite jurisdiction and authority.

⁴ Income Tax Ordinance 2001 and the Sales Tax Act 1990.

⁵ Arguments were primarily articulated by Mr. Shahid Ali Qureshi, Advocate and Dr. Shahnawaz Memon, Advocate and seconded by the remaining learned counsel.

⁶ Vide Finance Act 2014.

⁷ S.32 (2) *Where, by reason of any such document or statement as aforesaid or by reason of some collusion, any duty, **taxes** or charge has not been levied or has been short-levied or has been erroneously refunded, the person liable to pay any amount on that account shall be served with a notice ...*

⁸ S.179. *Power of adjudication. (1) Subject to sub-section (2), in cases involving confiscation of goods or imposition of penalty under this Act or the rules made thereunder, the jurisdiction and powers of adjudication of the Officers of Customs in terms of amount of duties and other **taxes** involved, ...*

⁹ Being sections 32 and 179 of the Customs Act 1969.

Salient feature of the representative instrument under scrutiny

6. The instrument¹⁰ impugned in the lead petition, appraised in representative capacity, demonstrates that Adjudication seeks to recover only income tax and sales tax, allegedly short paid, and does not seek to recover any customs duty. Furthermore, the entire instrument is devoid of any reference to sections 32 and / or 179 of the Customs Act 1969 and does not even purport to have been issued thereunder.

Juxtaposition of the law

7. It is settled law¹¹ that levies emanate from taxing entries in the Federal legislative list and distinct entries therein¹² are the fountainhead for the impositions of customs duty¹³, excise¹⁴, income tax¹⁵ and sales tax¹⁶. Each levy operates in its own separate field¹⁷, governed by its parent statute¹⁸ and it is the pertinent enactment that ought to be considered first to determine the conferment of authority and the ambit thereof. Even while considering a taxing statute, it is imperative to consider its individual aspects. The House of Lords¹⁹ observed back in 1925 that charge, assessment and recovery are distinct facets of a levy. *Whitney* was cited with approval by the august Supreme Court in *H M Extraction*²⁰.

¹⁰ Notice dated 03.08.2017; available at page 137 of the lead petition.

¹¹ *Federation of Pakistan vs. Durrani Ceramics* reported as 2014 SCMR 1630.

¹² *Per Mian Saqib Nisar CJ in Pakistan (FBR) vs. Hazrat Hussain* reported as 2018 SCMR 939.

¹³ Entry 43.

¹⁴ Entry 44.

¹⁵ Entry 47.

¹⁶ Entry 49.

¹⁷ *Per Mian Saqib Nisar CJ in Pakistan (FBR) vs. Hazrat Hussain* reported as 2018 SCMR 939; *CIR vs. MCB Bank Limited* reported as 2021 PTD 1367.

¹⁸ *Per Mian Saqib Nisar CJ in Pakistan (FBR) vs. Hazrat Hussain* reported as 2018 SCMR 939.

¹⁹ *Per Lord Dunedin in Whitney vs. Inland Revenue Commissioners* reported as [1926] A.C. 37 (1925) – “Now, there are three stages in the imposition of a tax: there is the declaration of liability, that is the part of the statute which determines what persons in respect of what property are liable. Next, there is the assessment. Liability does not depend on assessment. That, *ex hypothesi*, has already been fixed. But assessment particularizes the exact sum which a person liable has to pay. Lastly, come the methods of recovery, if the person taxed does not voluntarily pay.”

²⁰ *Per Munib Akhtar J in H. M. Extraction Ghee & Oil Industries vs. FBR* reported as 2019 SCMR 1081.

Remit

8. A cardinal principle while exercising writ jurisdiction is that courts should abstain from deciding a Constitutional question, if a case could be decided on other or narrower grounds and that courts should not decide a larger question than was necessary for the determination of the case²¹.

9. We are assisted with ten judgments²² of the august Supreme Court to sanction consideration of orders / notices, related to a fiscal right based on a statutory instrument requiring no factual determination, issued without jurisdiction, illegal on the face of the record and / or mala fide; and the respondents' counsel have been unable to displace the jurisdiction so recognized. Therefore, we now proceed to consider the issue before us; being whether the law conferred any parallel / concurrent jurisdiction and authority upon Adjudication²³ to assess, recover or adjudicate short levy of income tax and sales tax post release / clearance of consignments. In this regard it is imperative to consider the import of the relevant statutes, being the Income Tax Ordinance 2001 and the Sales Tax Act 1990, to consider the authority conferred upon the Customs department, if any, and the remit thereof.

Income Tax

10. Section 148²⁴ of the Income Tax Ordinance 2001 empowers the Customs department to collect *advance tax* upon imports and stipulates that

²¹ Per *Saqib Nisar J* in *LDA & Others vs. Imrana Tiwana & Others* reported as 2015 SCMR 1739.

²² Five member bench judgments – *S A Haroon vs. Collector of Customs* reported as PLD 1959 SC 177 at page 177 B; *Pakistan vs. Qazi Ziauddin* reported as PLD 1962 SC 440 at page 449 H (*B Z Kaikaus J.*); *Nagina Silk Mill vs. ITO Lyallpur* reported as PLD 1963 SC 322 (*S A Rahman J.*). Three member bench judgments – *Lt. Col. N M A Khan vs. Controller of Estate Duty* reported as PLD 1961 SC 119 at page 127/8 E (*B Z Kaikaus J.*); *Usmania Glass vs. Sales Tax Officer Chittagong* reported as PLD 1971 SC 205 at page 209 B (*Wahiduddin J.*); *Murree Brewery vs. Pakistan* reported as PLD 1972 SC 279 at page 287 A (*Salahuddin Ahmed J.*); *Edujji Dinshaw Limited vs. ITO* reported as PLD 1990 SC 399 at pages 414, 415 & 422 (*Abdul Kadir Shaikh J.*); *Julian Hoshang Dinshaw Trust vs. ITO* reported as 1992 SCMR 250 at page 255 B & C (*Muhammad Afzal Lone J.*); *Attock Cement vs. Collector Customs* reported as 1999 PTD 1892 at page 1903 E & G; *CIT vs. Eli Lilly* reported as 2009 SCMR 1279 at page 1341 P (*Iftikhar Muhammad Chaudhry CJ.*).

²³ Collectorate of Customs (Adjudication).

²⁴ 148. Imports.(1) *The Collector of Customs shall collect advance tax from every importer of goods on the value of the goods at the rate specified in ...*

(5) *Advance tax shall be collected in the same manner and at the same time as the customs-duty payable in respect of the import or, if the goods are exempt from customs-duty, at the time customs-duty would be payable if the goods were dutiable.*

(6) *The provisions of the Customs Act, 1969 (IV of 1969), in so far as relevant, shall apply to the collection of tax under this section...*

the same shall be collected in the same manner *and at the same time* as the customs duty payable in respect of the import. It is patently clear that the statutory provision empowers the Customs department to *collect* advance tax and the stage of such collection is demarcated as being that when customs duty is to be collected, i.e. at the time of import and prior to or at the time of clearance. *Prima facie* there appears to be no express authority to assess, recover or adjudicate any alleged short levy of income tax, post release / clearance of consignments.

11. The departmental counsel insisted that section 161(2)²⁵ conferred a blanket power upon Adjudication to assess, recover or adjudicate short levy of income tax in respect of imports. While the aforesaid provision empowers an *agent* to recover tax, it has to be read in context; being that such power could only be exercised to collect *advance tax* and that also *at the time of* import, hence, prior to or at the time of clearance, per section 148 of the Ordinance. The section under consideration addresses failure to pay tax collected or deducted and it was observed by the august Court in *MCB*²⁶ that the section becomes applicable not simply because of an event / transaction but rather on a failure to either collect or deduct and it is such failure that is the triggering event. *Munib Akhtar J* observed that “*while a duty²⁷ is imposed on the Collector of Customs to collect tax on imports one wonders how many collectors have been issued notices and held personally liable in terms of section 161²⁸.*”

12. The Customs department merely acts as a collecting agent for *advance tax* in terms of section 148 of the Income Tax Ordinance and the said conferment does in no manner create any other jurisdiction for the department in regards to income tax. The Supreme Court has categorically held in *Hazrat Hussain*²⁹ that section 148 of the Ordinance does not alter the specie of the levy and at all material times what is being collected by the Customs is advance income tax and not customs duty. Earlier Division Benches of this Court have consistently maintained that merely by providing the manner and time for collection of tax, the nature of tax would not change and if advance tax

²⁵ A person personally liable for an amount of tax under sub-section (1) as a result of failing to collect or deduct the tax shall be entitled to recover the tax from the person from whom the tax should have been collected or deducted.

²⁶ Per *Munib Akhtar J* in *CIR vs. MCB Bank Limited* reported as 2021 PTD 1367.

²⁷ Per section 161(1)(a) of the Income Tax Ordinance 2001.

²⁸ Page 1377 of *CIR vs. MCB Bank Limited* reported as 2021 PTD 1367.

²⁹ *Pakistan (FBR) vs. Hazrat Hussain* reported as 2018 SCMR 939.

can be collected by Customs officers the same will not change the nature of the tax³⁰. In the event that the Customs department is unable to collect the *advance tax* payable at the time of import, there is no impediment upon the Inland Revenue department to recover the same directly per section 162³¹ of the Ordinance³².

13. Sub section 6³³ of section 148 stipulates that the provisions of the Customs Act 1969, *in so far as relevant*, shall apply to the collection of tax *under the said section*. This provision makes it clear that the the relevant provisions of the Customs Act would apply only to the extent of collection of tax solely in respect of section 148. Section 148 deals with advance tax at the stage of imports, which is to be collected at the time of import. Respondents' learned counsel have remained unsuccessful to set forth any case for confer any authority upon Adjudication to assess, recover or adjudicate any alleged short levy of income tax, post release / clearance of consignments.

Sales Tax

14. The next aspect to consider is with regards to sales tax. Section 6³⁴ of the Sales Tax Act 1990 stipulates that the time and manner for payment of the tax. It states that tax in respect of *imported goods* be charged and paid in the same manner and at the same time as if it were a customs duty and that the provisions of the Customs Act 1969, so far as they relate to collection, payment and enforcement including recovery of tax under this Act on such goods shall apply where no specific provision exists in the said statute.

³⁰ *Al Haj Industrial Corporation vs. Collector of Customs* reported as 2004 PTD 801; reliance was placed on *Crescent Pak Industries vs. Pakistan* reported as 1990 PTD 29, *English Biscuits vs. Assistant Collector* reported as 1991 PTD 178 and *Kohinoor Textile vs. Pakistan* reported as 2002 PTD 121.

³¹ 162. *Recovery of tax from the person from whom tax was not collected or deducted. (1) Where a person fails to collect tax as required under Division II of this Part or Chapter XII or deduct tax from a payment as required under Division III of this Part or Chapter XII, the Commissioner may pass an order to that effect and recover the amount not collected or deducted from the person from whom the tax should have been collected or to whom the payment was made...*

³² Per *Munib Akhtar J* in *HBL vs. Pakistan* reported as 2013 PTD 1659; ratio whereof was upheld by the Supreme Court in *CIR vs. MCB Bank Limited* reported as 2021 PTD 1367.

³³ (6) *The provisions of the Customs Act, 1969 (IV of 1969), in so far as relevant, shall apply to the collection of tax under this section...*

³⁴ 6. *Time and manner of payment. (1) The tax in respect of goods imported into Pakistan shall be charged and paid in the same manner and at the same time as if it were a duty of customs payable under the Customs Act, 1969 and the provisions of the said Act including section 31A thereof, shall, so far as they relate to collection, payment and enforcement including recovery of tax under this Act on such goods **where no specific provision exists in this Act**, apply...*

15. The heading of the said section states *time and manner for payment*. It is settled law that headings do not control the meaning and do not define its scope. While headings may assist in interpretation of a section, if the words appear to be doubtful, however, they cannot restrict the plain words of the section³⁵. The verbiage of the provision specificates that it deals with goods imported into Pakistan. Accepting the plain meaning of the language employed by the statute it would appear that the said section, in the first instance, is not all encompassing and applies with respect to imports. The necessary corollary would be that supplies are excluded from the ambit.

16. The next question to consider is the ambit of section 6 even when considering it in the perspective of imports. The assessment and recovery of sales tax is governed by section 11 of the Sales Tax Act 1990 and there is no limitation, with respect to imports or supplies, manifest therein. It caters for assessment of tax and recovery of tax not levied or short levied or erroneously refunded. The earlier section 36 of the Sales Tax Act was omitted vide Finance Act 2012 and simultaneously section 11 of the Act was substituted, mirroring the earlier sections 36(1) and 36(2) as subsections 3 and 4 of the substituted section 11. It is imperative to observe that the said provision of law makes no distinction between tax in respect of supplies and imports, hence, the ambit thereof cannot be restricted merely to supplies by any stretch of interpretation.

17. The Supreme Court has categorically held in *Hashwani Hotels*, in *pari materia* circumstances, that provisions of the Customs Act 1969 could only be found to apply if no specific provision were provided for the same in the Sales Tax Act 1990; analogous to the said edict it is *prima facie* apparent that the Sales Tax Act 1990 contains provisions to deal with the assessment and recovery of tax, irrespective of whether pertinent to supplies or imports, hence, it has to be considered as to what authority has been conferred upon the Customs department post amendment to section 6 of the Sales Tax Act 1990 in 2015³⁶.

³⁵ Per *Nasim Hasan Shah J* in *ECP vs. Asif Iqbal* reported as *PLD 1992 SC 342* @ page 349.

³⁶ Reference is to insertion of the words *including recovery* to section 6 of the Sales Tax Act 1990.

18. It is important to note that prior to Finance Act 2015 the relevant provision of law did not contain the words *including recovery*. The department reads this insertion as conferring power upon the Customs department to recover sales tax regardless of whether it's prior to clearance or subsequent thereto. Mr. Shahid Ali Qureshi, Advocate was also of the view that conjoined with the power to recover was the ancillary powers to assess. However, the petitioners' counsel emphasized on the proviso *where no specific provision exists in this Act* to insist otherwise.

19. Prior to 2015, while section 6 of the Sales Tax Act 1990 did contain the proviso *where no specific provision exists in this Act*, however, it did not contain the words *including recovery*, inserted right after the word enforcement. There is a legal presumption that the legislature is presumed to know the state of the existing law, be it statutory or judicial decisions, and any modification / variance is enacted to vary / modify the pre-existing state³⁷. Per the departmental counsel, the insertion of the words *including recovery* conferred blanket concurrent powers upon the Customs department to assess and recover sales tax at any stage, however, the petitioners' counsel respectfully disagreed.

20. There is no cavil to the proposition that redundancy ought not to be attributed to legislation³⁸ or to any word³⁹ therein, however, a court may also not import words, into legislation, which are not expressed or which cannot be reasonably implied on any recognized principle of construction⁴⁰. It is the respondents' case that agreeing with the petitioners would render the words *including recovery*, inserted in section 6, as redundant; whereas, it is the petitioners' case that accepting the departmental interpretation would render section 11 of the Sales Tax Act surplus.

³⁷ Per *Hamoodur Rahman J.* in *PTC vs. KMC* reported as *PLD 1967 SC 241* and *Chairman District Council Jhelum vs. Ali Akbar* reported as *1970 SCMR 105*; Per *Saleem Akhtar J.* in *SLIC vs. Mercantile Mutual Insurance* reported as *1993 SCMR 1394*; Per *Nzim Hussain Siddiqui CJ.* in *Master Foam vs. Pakistan* reported as *2005 PTD 1537*; Per *Mushir Alam J.* in *FGEHF vs. Malik Ghulam Mustafa* reported as *2021 SCMR 201*.

³⁸ *Collector of Sales Tax vs. Mega Tech* reported as *2005 SCMR 1166*; *Iqbal Hussain vs. Pakistan* reported as *2010 PTD 2338*.

³⁹ Per *Roberts J.* in *United States vs. Butler* reported as *297 US 1, 65 (1936)*.

⁴⁰ *Zahid Iqbal vs. Hafiz Muhammad Adnan & Others* reported as *2016 SCMR 430*; *Nadeem Ahmed Advocate vs. Federation of Pakistan* reported as *2013 SCMR 1062*; *Amanullah Khan vs. Chief Secretary NWFP & Others* reported as *1995 SCMR 1856*.

21. It is our view that insertion of the words *including recovery* in section 6 did not render section 11 surplus as apparently entirely different scenarios are contemplated. In terms of the law for the time being in force, section 6 deals with the time and manner of payment upon import and the words *including recovery* cannot be read to confer any additional powers. The provision for assessment and recovery of sales tax, not levied, short levied or erroneously refunded, remains section 11. To the extent of collection, payment and enforcement including recovery at the time of imports, the Sales Tax Act 1990 confers parallel jurisdiction upon the Customs department, however, no case has been established before us to consider any jurisdiction of the Adjudication to assess, adjudicate and / or recover any short levy of sales tax once the import / consignment has been assessed and released per sections 79 / 80 of the Customs Act 1969.

Insertion of the word taxes in sections 32 and 179 of the Customs Act 1969

22. The department's counsel had stressed that the word *taxes* had been inserted in sections 32 and 179 of the Customs Act 1969 and such insertion ought to be given effect as otherwise the entire statutory amendment / insertion would be rendered otiose.

23. Mr. Hyder Ali Khan, in reprisal, invoked the *Doctrine of Missed Fire*. Learned counsel resonated the words of Lord Macmillan, speaking for the House of Lords in *Ayrshire Employers' Mutual Insurance*⁴¹, to illustrate the canon:

"The Attorney-General with engaging candour submitted that he ought to succeed because, although the subsection might not in terms fit the case, it was nevertheless manifest that Parliament must have intended to cover it; if it did not cover it, then he could not figure any case which it could cover, and Parliament must be presumed to have intended to effect something. I can imagine what he would, have said had the case been the converse one of a taxpayer pleading that, although the words of the charging enactment covered his case, it was nevertheless manifest that Parliament could not have intended to tax him... The Legislature has plainly missed fire. Its failure is perhaps less regrettable than it might have been, for the subsection has not the meritorious object of preventing evasion of taxation, but the less laudable design of subjecting to tax as profit what the law has consistently and emphatically declared not to be profit. I should dismiss the appeal."

⁴¹ *Ayrshire Employers' Mutual Insurance Company vs. IRC* reported as (1946) 27 TC 331, [1946] UKHL3.

Earlier Division benches of this court have recognized the said doctrine in at least two edicts, being *Engro Vopak*⁴² and *ABAD*⁴³.

24. It is a long standing rule of statutory interpretation that even if a statute, or provision thereof, could be reasonably susceptible to two interpretations, one rendering it valid and the other invalid, courts ought to adopt the construction which saves the statute, or provision thereof⁴⁴.

25. An earlier Division Bench of this Court maintained in *Hashwani Hotels*⁴⁵ that a transaction governed under the Sales Tax Act 1990 is to be considered in the light of the provisions contained in the said enactment and not on the basis of anything contained in another tax statute, in the said case being the Customs Act 1969. In appeal, the august Supreme Court⁴⁶ complimented that the provisions of the Customs Act 1969, relating to calculation, payment and enforcement of sales tax, would only be applicable if no specific provision were provided for the same in the Sales Tax Act 1990.

26. The principle enunciated supra is equally applicable in the context of the Income Tax Ordinance as well. Therefore, it is our deliberated opinion that the insertion of the words *taxes* in sections 32 and 179 of the Customs Act 1969 does have effect, however, only to the extent permissible by the Income Tax Ordinance 2001 and Sales Tax Act 1990, pertinent to the present facts and circumstances.

Conclusion

27. It is the considered view of this Court that while the insertion of the word *taxes* in sections 32 and 179 of the Customs Act 1969 confers parallel jurisdiction upon the Customs department to the extent contemplated vide the parent statutes⁴⁷, however, in either instance the ambit is circumscribed to imports and that also at the import stage, being prior to or at the time that the import / consignment has been assessed and released per sections 79 / 80 of

⁴² Per *Munib Akhtar J* in *Engro Vopak Terminal Limited vs. Pakistan* reported as 2012 PTD 130 @ page 143.

⁴³ Per *Munib Akhtar J* in *Association of Builders and Developers of Pakistan vs. Sindh* reported as 2018 PTD 1487 @ page 1504.

⁴⁴ *United States vs. Delaware & Hudson Company* reported as 213 US 366 @ 407; *United States vs. Jin Fuey Moy* reported as 241 US 394 @ 401.

⁴⁵ *Hashwani Hotels Limited vs. Pakistan* reported as 2004 PTD 901.

⁴⁶ *Hashwani Hotels Limited vs. Pakistan* reported as 2007 SCMR 1131.

⁴⁷ In the present context being the Income Tax Ordinance 2001 and the Sales Tax Act 1990.

the Customs Act 1969. Therefore, the notices / constituents⁴⁸ thereof, *prima facie* related to a fiscal right based on a statutory instrument requiring no factual determination, seeking to assess, recover or adjudicate any alleged short levy of income tax / sales tax, post release / clearance of consignments, are determined to be patently without jurisdiction and illegal on the face of the record.

28. In view hereof, these petitions were allowed, in Court at the conclusion of the hearing, in terms of our short order dated 15.11.2022, operative constituent whereof is reproduced herein below:

“For reasons to be recorded later on these petitions are allowed to the extent that the officers of Collectorate of Customs (Adjudication) have no jurisdiction to recover or adjudicate any short levy / recovery of sales tax and income tax once the imported consignments have been assessed to duty and taxes in terms of section 80 of the Customs Act, 1969 and are released / cleared from Customs. The impugned show cause notices, only to this extent are held to be issued without lawful authority and jurisdiction and are hereby set-aside; however, the proceedings, if any, in respect of short levied sales tax and income tax can be initiated by the Officers of Inland Revenue Department, strictly in accordance with law. Office to place copy of this order in the connected petitions as above.”

These are the reasons for our short order. The office is instructed to place a copy hereof in each of the connected petitions.

JUDGE
(29.11.2022)

JUDGE
(29.11.2022)

⁴⁸ *Engro Vopak vs. Pakistan* reported as 2012 PTD 130; *Standard Chartered Bank vs. Pakistan* reported as 2017 PTD 1585.

Schedule

CP D 8667 of 2017 - Procon Engineering (Pvt.) Ltd v. Fed. of Pakistan & Others	CP D 4601 of 2018 - Nestle Pakistan Ltd. v. FBR & Others
CP D 7172 of 2018 - Nestle Pakistan Ltd v. FBR & Others	CP D 1585 of 2019 -- Be Energy Ltd v. Pakistan & Others
CP D 1612 of 2019 - Attock Petroleum Ltd v. Pakistan & Others	CP D 1725 of 2019 - Be Energy Ltd v. Pakistan & Others
CP D 1876 of 2019 - Gas & Oil Pakistan Ltd v. Pakistan & Others	CP D 1908 of 2019 - Hascol Petroleum Ltd v. Fed. of Pakistan & Others
CP D 1990 of 2019 - PSO Co. Ltd v. Pakistan & Others	CP D 1991 of 2019 - PSO Co. Ltd v. Pakistan & Others
CP D 1992 of 2019 - PSO Co. Ltd v. Pakistan & Others	CP D 1993 of 2019 - PSO Co. Ltd v. Pakistan & Others
CP D 1994 of 2019 - OTO Pakistan (Pvt.) Ltd v. Pakistan & Others	CP D 5654 of 2019 - P.S.O Co. Ltd v. Pakistan & Others
CP D 4245 of 2021 - Shirazi Trading Company (Pvt.) Limited v. Pakistan & Others	CP D 4246 of 2021 - Shirazi Trading Co. (Pvt.) Ltd v. Pakistan & Others
CP D 4247 of 2021 - Shirazi Trading Co. (Pvt.) Ltd v. Pakistan & Others	CP D 4248 of 2021 - Shirazi Trading Co. (Pvt.) Ltd v. Pakistan & Others
CP D 4249 of 2021 - Shirazi Trading Co. (Pvt.) Ltd v. Pakistan & Others	CP D 4250 of 2021 - Shirazi Trading Co. (Pvt.) Ltd v. Pakistan & Others
CP D 4251 of 2021 - Shirazi Trading Co. (Pvt.) Ltd v. Pakistan & Others	CP D 4252 of 2021 - Shirazi Trading Co. (Pvt.) Ltd v. Pakistan & Others
CP D 4253 of 2021 - Shirazi Trading Co. (Pvt.) Ltd v. Pakistan & Others	CP D 4254 of 2021 - Shirazi Trading Co. (Pvt.) Ltd v. Pakistan & Others
CP D 4255 of 2021 - Shirazi Trading Co. (Pvt.) Ltd v. Pakistan & Others	CP D 4256/2021 - Shirazi Trading Co. (Pvt.) Ltd v. Pakistan & Others
CP D 4257 of 2021 - Shirazi Trading Co. (Pvt.) Ltd v. Pakistan & Others	CP D 4258 of 2021 - Shirazi Trading Co. (Pvt.) Ltd v. Pakistan & Others
CP D 4259 of 2021 - Shirazi Trading Co. (Pvt.) Ltd v. Pakistan & Others	CP D 4491 of 2021 - Shirazi Trading Co. Pvt. Ltd v. Pakistan & Others