

IN THE HIGH COURT OF SINDH AT KARACHI

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

CP D 5389 of 2022

Young Tech (Pvt.) Limited
vs.
The Federation of Pakistan & Others

(And connected matters, particularized in the Schedule¹ hereto)

Messrs. Sardar Muhammad Ishaque, Amjat Hayat, Muhammad Faisal Qasmi, Umer Akhund, Yasir Ali, Uzair Qadir Shoro and Rana Sakhawat Ali, advocates for the petitioners.

Messrs. Irfan Mir Halepota, Khalid Rajpar, Masooda Siraj, Dr. Shah Nawaz, Dr. Huma Sodher, Mohabbat Hussain Awan, Faheem Raza, Muhammad Rashid Arfi, Asif Ali Siyal, Ghulam Mujtaba Sahito, Mirza Nadeem Taqi, Fozia M. Murad, Sheza Malik, Aamir Raza, Tassaduq Nadeem, Aamir Ali Shaikh, Asad Ali Khan Sherwani, advocates, G.M. Bhutto (Assistant Attorney General), Muhammad Farooq Khan (Law Officer) and Faraz Ahmed (Appraising & Valuation Officer), for the respondents.

Date/s of hearing : 14.03.2023

Date of announcement : 14.03.2023

ORDER

Agha Faisal, J. The petitioners have imported mobile telephones and are aggrieved with the unwarranted imposition of mobile hand set levy, under Section 10 of the Finance Act, 2018, upon mobile telephones that are *admittedly* not smart phones.

2. Section 10 of the Finance Act, 2018 imposed a mobile hand set levy on *smart phones* in the following terms:

“10. Mobile handset levy---(1) There shall be levied a Mobile handset levy, at the rates specified in column (3) of the Table below, on ***smart phones*** of different categories as specified in column (2) of the said Table, namely:

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

TABLE

S.No.	Category of smart phone	Rate of levy per Set in rupees
(1)	(2)	(3)
1	Where Import value of handset (including duties and taxes) does not exceed Rs.10,000/-	Nil
2	Where Import value of handset (including duties and taxes) exceeds Rs.10,000 but does not exceed Rs.40,000/-	1000
3	Where Import value of handset (including duties and taxes) exceeds Rs.40,000 but does not exceed Rs.80,000/-	3000
4	Where Import value of handset (including duties and taxes) exceeds Rs.80,000/-	5000

(2) The Federal Board of Revenue shall collect levy on mobile handsets in the prescribed manner.”

3. The Finance Act, 2022 amended the table, in provision mentioned above, and relevant amendment read as follows:

“7. Amendment in Finance Act, 2018 (XXX of 2018). In the Finance Act, 2018 (XXX of 2018), in section for the TABLE, the following shall be substituted, namely:

TABLE

Sr. No	Mobile Phones having C&F Value (US Dollars)	Rate of levy per Set in Pak Rupees
(1)	(2)	(3)
1.	Up to 30	100
2.	Above 30 and up to 100	200
3.	Above 101 and up to 200	600
4.	Above 201 and up to 350	1800
5.	Above 351 and up to 500	4000
6.	Above 501 and up to 700	8000
7.	Above 701 and above	16000”

4. It is the petitioners’ case that the mobile hand set levy remains imposed *only* on *smart phones* and since the imported consignments *admittedly* did not fall under the said category, hence, the recovery of pertinent levy therefrom is without any sanction in law.

5. The department had initially taken a stance that the amendment of the relevant table substituted the heading in column 2 of the table from *smart phones* to *mobile phones*, hence, all mobile phones ought to be included in

the relevant ambit. However, today the respondents' counsel and officer present submitted that they had already sent a representation to the FBR in such regard as the application of the levy on phones, other than smart phones, appears to be inconsistent with the enactment itself. In such regard, copy of the representation dated 08.12.2022 was provided to us and it was further submitted that a reminder has also been sent in January 2023.

6. It is considered expedient to reproduce the aforementioned representation herein below:

“Subject: MOBILE HANDSET LEVY UNDER SECTION 10 OF FINANCE ACT, 2018 AS AMENDED BY FINANCE ACT, 2022”

Please refer to subject cited above and find enclosed herewith a representation dated 11.11.2022 filed by M/s. Deploy, on the subject matter.

02 The under reference issue pertains to imposition of "Mobile Handset Levy" (MHL) on import of various categories of mobile "Smart Phones" (in CKD/SKD or CBU condition) by the Federal Government in Finance Act, 2018 (Annexure-A) and same was being collected accordingly Subsequently, in Finance Act, 2022 an amendment was inserted and only the table provided with section 10 of Finance Act, 2018 was amended, whereby new rates of subject levy were introduced and the WeBOC system started charging the levy on all kinds of mobile phones including smart phones of PCT 8517.1100 and also on other than smart phones (or low cost Mobile Feature Phones) of PCT 8517.1390, which were being imported in CKD/SKD condition by local mobile phone assemblers / manufacturers (Annexure-B).

03. It is pertinent to point out here that while making the amendment in Finance Act, 2022; the preamble in the Finance Act, 2018 was left un-amended and it states clearly that that the levy is on "smart phones of different categories", however, the WeBOC system started charging the instant levy on all kinds of mobile phones, including feature phones of PCT 8517.1390. This lead to a legal anomaly and various importers filed Constitutional Petitions (C.Ps) before the Hon'ble High Court of Sindh with the contention that Mobile Handset Levy under Section 10 of the Finance Act is not applicable on the importers as being manufacturers of features phones. In said C.Ps. Interim Orders are passed by the Hon'ble Court of Sindh (Annexure-C). Meanwhile, the Collectorate has been clearing the consignments of CKD/ SKD Mobile Feature Phones provisionally u/s 81 of the Customs Act, 1969 by securing the subject levy in shape of Bank Guarantees.

04. The Collectorate is of view that contention of the importers' merits consideration as originally in Finance Act, 2018, the hand set levy was meant for Smart phones only and now the same is being also charged on low cost Feature mobile phones imported in CKD/ SKD condition. Accordingly, the above referred representation of the importer may be referred to the Finance

Division for clarification as to whether the said levy is applicable on both Smart and Feature phones or Smart phones only.

Encl: (As above.)

(Muhammad Amir Thahim)
Collector”

7. It is observed that the levy imposed vide Section 10 of the Finance Act, 2018 was in respect of smart phones. The reference to the table therein was to the extent that the respective rates were to be as specified in column 3 thereof. The substitution of the table vide Finance Act, 2022 made no change to the verbiage of the charging section itself and by mere substitution of a column heading in a table, the charging section in itself could not be demonstrated to have been altered. The representation by the department to the FBR dated 08.12.2022 also supports this observation. Under such circumstances, no case has been established before us to consider the mobile hand set levy on anything, other than smart phones, as specifically stated in the relevant provision of the law.

8. In view hereof, the demand for mobile hand set levy on phones, other than smart phones, was found to be unlawful and these petitions were allowed to such extent vide our short order, announced in court at the conclusion of the hearing. These are the reasons for our short order.

JUDGE
15.03.2023

JUDGE
15.03.2023

Schedule

CP D 4987 of 2022 - Yound Tech Pvt Ltd v. Fed. of Pakistan & Others	CP D 5004 of 2022 - Bellco Trading Co. v. Fed. of Pakistan & Others
CP D 5069 of 2022 - Inovi Telecom Pvt Ltd v. Fed. of Pakistan & Others	CP D 5245 of 2022 - Club Mobile Pvt Ltd v. Fed. of Pakistan & Others
CP D 5689 of 2022 - SSH Telecom SMC (Pvt) Ltd v. Fed. of Pakistan & Others	CP D 6028 of 2022 - A.S Telecom Pvt Ltd v. Fed. of Pakistan & Others
CP D 6120 of 2022 - Young Tech v. Fed. of Pakistan & Others	CP D 6925 of 2022 - G Five Mobile Pvt Ltd v. Fed. of Pakistan & Others
CP D 6926 of 2022 - A.S Telecom Pvt Ltd v. Fed. of Pakistan & Others	CP D 7031 of 2022 - Young Tech Pvt Ltd v. Fed. of Pakistan & Others
CP D 7332 of 2022 - Club Mobile Pvt Ltd v. Fed. of Pakistan & Others	CP D 7336 of 2022 - A.S Telecom Pvt Ltd v. Fed. of Pakistan & Others
CP D 7470 of 2022 - Young Tec Pvt Ltd v. Fed. of Pakistan & Others	CP D 7668 of 2022 - G' Five Mobile Pvt Ltd v. Fed. of Pakistan & Others
CP D 7771 of 2022 - Young Tec Pvt Ltd v. Fed. of Pakistan & Others	CP D 241 of 2023 - G'Five Mobile Pvt Ltd v. Fed. of Pakistan & Others
CP D 242 of 2023 - Young Tec Pvt Ltd v. Fed. of Pakistan & Others	CP D 361 of 2023 - A.S Telecom Pvt Ltd v. Fed. of Pakistan & Others
CP D 47 of 2023 - Youngs Tech Pvt Ltd v. Fed. of Pakistan & Others	CP D 474 of 2023 - Young Tec Pvt Ltd v. Fed. of Pakistan & Others
CP D 529 of 2023 - G' Five Mobile Pvt Ltd v. Fed. of Pakistan & Others	CP D 530 of 2023 - A.S Telecom (Pvt) Ltd v. Fed. of Pakistan & Others
CP D 583 of 2023 - Young Tec Pvt Ltd v. Fed. of Pakistan & Others	CP D 966 of 2023 - A.S Telecom Pvt Ltd v. Fed. of Pakistan & Others