

**IN THE HIGH COURT OF SINDH, KARACHI**

*Before: Muhammad Junaid Ghaffar &  
Mohammad Abdur Rahman, JJ*

**I.T.R.A No. 175 of 2012**

The Commissioner Inland Revenue Zone-II, Regional Tax Office  
Vs.  
M/s. Habib Asset Management Limited

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Applicant : Nemo  
Respondent : through Mr. Jam Zeeshan Ali  
Date of Hearing : 22 January 2025  
Date of Judgement : 16 April 2025

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**Special Federal Excise Reference No.14 of 2016**

Alfalah GHP Investment Management Limited  
Vs.  
Federation of Pakistan & others

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Appellant : through Mr. Maaz Waheed  
Respondent : through Mr. Muhammad Aqeel Qureshi  
Date of hearing : 22 January 2025  
Date of Judgement : 16 April 2025

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**J U D G E M E N T**

**MOHAMMAD ABDUR RAHMAN,J:** This Judgement will decide:

- (i) ITRA No.175 of 2012<sup>1</sup>, maintained by the Commissioner Inland Revenue Zone-II, Regional Tax Office, under section

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<sup>1</sup> The Application was inadvertently entered in the institution register of this Court as an Income Tax Reference Application while it should have been registered as a Special Federal Excise Reference Application.

34-A of the Federal Excise Act, 2005 (hereinafter referred to as the "FEA, 2005"), as against a common order dated 29 May 2012 passed by the Appellate Tribunal Inland Revenue, Karachi Bench in three appeals bearing F.E.A No.31/KB/2012 for the Tax Year 2008, F.E.A No.32/KB/2012 for the Tax Year 2009, F.E.A No.33/KB/2012 for the Tax Year 2010 in respect of the assessment of Habib Asset Management Limited and

- (ii) Spl.F.E.R.A No.14 of 2016 maintained by Alfalah GHP Investment Management Limited under section 34-A of the FEA, 2005, as against an order dated 10 May 2016 passed by the Appellate Tribunal Inland Revenue (Pakistan) at Karachi in F.E.A No.45/KB/2012 in respect of the liability of Alfalah GHP Investment Management Limited to pay Federal Excise Duty for the Tax year 2012.

#### **A. Facts**

##### **(i) Habib Asset Management Limited**

2. Habib Asset Management Limited is a company operating under a license issued by the Securities & Exchange Commission of Pakistan permitting it to undertake asset management services as a "Non-Banking Financial Company".

3. The Commissioner Inland Revenue Zone-II, purporting to read Section 3 with Entry 8 of Table II of the First Schedule of the FEA, 2005, contended that, irrelevant as to the fact that the services that were being provided by Habib Asset Management Limited did not come within the purview of the Services listed in the Sub-Headings of Entry 98.13 of the First Schedule of the Customs Act, 1969 (hereinafter referred to as the "Pakistan Customs Tariff"), as the services provided by them came within the definition of the expression "service" as defined in Sub-Section (23) of Section 2 of the FEA, 2005, Habib Asset Management Limited was liable under Section 3 of the FEA, 2005 to pay excise duty at a rate of 16% for all services provided by it.

4. The matter was considered by the Officer Inland Revenue Audit Unit-05, Zone-II, RTO, Karachi who, on 7 December 2011, passed Order in Original No. 5 of 2011 stating that excise duty was leviable on Habib Asset Management Limited under Section 3 read with Entry 8 of Table II of the

First Schedule of the FEA, 2005 at the rate of 5% tax for the Tax Year 2008, 10% for the Tax Year 2009 and 16% for the Tax Year 2010, irrelevant as to the fact that the services that were being provided by Habib Asset Management Limited did not come with the purview of the Services listed in the Sub-Headings of Entry 98.13 of the Pakistan Customs Tariff.

5. An Appeal was preferred by Habib Asset Management Limited before the Commissioner Inland Revenue Appeals-II, Karachi who on 24 April 2012 by Order in Appeal No. 40 of 2012 dismissed the appeal upholding that the order passed by Officer Inland Revenue Regional Tax Office Karachi. Further appeals were preferred by Habib Asset Management Limited before the Appellate Tribunal Inland Revenue Karachi Bench bearing F.E.A No.31/KB/2012 for the Tax Year 2008, F.E.A No.32/KB/2012 for the Tax Year 2009, F.E.A No.33/KB/2012 for the Tax Year 2010 and which Tribunal allowed the appeal stating that a charge in respect of Excise Duty could only be made under a Sub-Heading as contained in the Pakistan Customs Tariff and rejected the argument that such levy could be imposed directly under Section 3 read with Entry 8 of Table II of the First Schedule of the FEA, 2005. The Commissioner Inland Revenue Zone-II, Karachi maintains this appeal against the common order of the Appellate Tribunal Inland Revenue Karachi Bench on the following questions of law:

“ ... a. Whether, on facts and in the circumstances of the case, the Tribunal was justified to hold that doctrine of 'Res Judicata' applies to proceedings u/s 14 of the Federal Excise Act, 2005, because the matter has never been litigated in the past?

b. Whether, on facts and in the circumstances of the case, the Tribunal was justified to hold that the services provided by the respondent were not excisable under the "Heading/sub-heading Number"- 98.13 at Serial No. 8 of Table-II of the First Schedule to the Federal Excise Act, 2005?"

**(ii) Alfalah GHP Investment Management Limited**

6. Alfalah GHP Investment Management Limited is a company operating under a license issued by the Securities & Exchange Commission of Pakistan permitting it to undertake asset management services as a “Non-Banking Financial Company”.

7. An Order-in-Original No. 9 of 2012 was passed by the Assistant Commissioner Inland Revenue, Regional Tax Office, Karachi, as against by Alfalah GHP Investment Management Limited maintaining that Federal Excise Duty would be payable by it under Section 3 read with Entry 8 of

Table II of the First Schedule of the FEA, 2005 for the Tax Year 2010 and the Tax Year 2011.

8. Order-in-Original No. 9 of 2012 was appealed by Alfalah GHP Investment Management Limited before the Commissioner Inland Revenue (Appeals-II), Regional Tax Office, Karachi and which was dismissed upholding the order of the Inland Revenue, Regional Tax Office, Karachi. An Appeal bearing No.F.E.45/KB/2012 was preferred by Alfalah GHP Investment Management Limited as against the order before the Appellate Tribunal Inland Revenue Pakistan at Karachi and who by an order dated 10 May 2016 had also dismissed the same.

9. Alfalah GHP Investment Management Limited thereafter preferred the instant Special Federal Excise Reference on the following questions of law:

- “ ...
- A. Whether the Impugned Order failed to consider the exemption granted to the Appellant pursuant to Serial No. 8 Table II of the Third Schedule read with Section 16 of the Federal Excise Act 2005 and therefore wrongly upheld the Order of the Commissioner (Appeals)?*
- B. Whether the Impugned Order has grossly misinterpreted the applicable statutory provisions including (but not limited to) Section 3, 16, Serial No. 8 Table II of the First Schedule and Serial No. 8 Table 11 of the Third Schedule of the Federal Excise Act, 2005?*
- C. Whether the Impugned Order erred in holding that the 'Asset Management Services' fell within the scope of Serial No. 8 Table II of the First Schedule to the Federal Excise Act, 2005P*
- D. Whether the Impugned Order suffers from a complete misreading and misapplication of the evidence and law?*
- E. Whether the Impugned Order has erred by denying the Appellant the benefit of the exemption and is therefore discriminatory and unconstitutional?*
- F. Whether the Department could have initiated recovery proceedings an attached the accounts of the Appellant before the Appellate Tribunal passed its order?*
- G. Whether a Division Bench Order of the Appellate Tribunal is binding upon a subsequent Division Bench of the Appellate Tribunal?*

The questions of law were reformulated on 2 December 2024 and which read as hereinunder:

- “ ...
- A. Whether the 'Services provided by Asset Management Companies' were liable to excise duty under the Federal Excise Act, 2005, during the period in question (i.e. from July 2010 to June 2011)?*
- B. Without prejudice, whether the 'Services provided by Asset Management Companies' were otherwise exempt from excise duty under the Federal Excise Act, 2005, during the period in question (i.e from July 2010 to June 2011)?*
- C. Whether an order of a division bench of the Appellate Tribunal is binding on a subsequent division bench of the Appellate Tribunal?”*

**B. The Arguments of the Counsel**

10. Mr. Jam Zeeshan Ali entered appearance on behalf of Habib Asset Management Limited in I.T.R.A No. 175 of 2012 and contended that, in respect of services provided by Non-Banking Financial Institutions, for a levy of excise duty to be imposed, it was necessary for the service provided to find mention in the Sub-Headings as contained in Pakistan Customs Tariff. He contended that the definition of the expression “services” as contained in Sub-Section (23) of Section 2 of the FEA, 2005 and the explanation given to Section 3 of the FEA, 2005 mandated that only a service as detailed in the Sub-Headings contained in Chapter 98 of the Pakistan Customs Tariff would be subject to such a levy. He contended that as there was no mention of any service provided by Habib Asset Management Limited in Chapter 98 of the Pakistan Customs Tariff, there would be no cause for any levy to be imposed as against Habib Asset Management Limited. Mr. Maaz Waheed, who appeared on behalf of Alfalah GHP Investment Management Limited in Spl.F.E.R.A No.14 of 2016, adopted the arguments of Mr. Jam Zeeshan Ali.

11. Mr. Muhammad Aqeel Qureshi who appeared on behalf of the Department in Special Federal Excise Reference No.14 of 2016 contended that for a levy of excise duty to be imposed under Section 3 of the FEA, 2005 read with Entry No. 8 of Table II of the First Schedule of the FEA, 2005 and which made the levy of excise duty chargeable in respect of “*Non-Fund Services provided by banking companies or non-banking financial companies.*” He maintained that as the Alfalah GHP Investment Management Limited was clearly a “Non-Banking Financial Company” providing services to its customers and hence it was subject to the levy of excise duty as contained therein. No one appeared on behalf of the Department in I.T.R.A No. 175 of 2012.

**C. The Law**

12. We have heard Mr. Jam Zeeshan Ali, Mr. Maaz Waheed and Mr. Muhammad Aqeel Qureshi and have perused the record. As we had noted above, I.T.R.A No. 175 of 2012 had been presented under section 34-A of the Federal Excise Act, 2005 and should have been instituted by this Court as a Special Federal Excise Reference Application. Exercising our inherent jurisdiction, we are treating I.T.R.A No. 175 of 2012 as a Special Federal Excise Reference Application and will be adjudicating it on that basis. The office is directed to renumber I.T.R.A No. 175 of 2012 as a Special Federal Excise Reference Application.

(i) **The Provisions of FEA, 2005 and the Customs Act, 1969**

13. Section 3 of the FEA, 2005, as originally promulgated, imposed a Federal Excise Duty, inter alia, on the payment of certain services in the following terms:<sup>2</sup>

- “ ... 3. Duties specified in the First Schedule to be levied.—
- (1) Subject to the provisions of this Act and rules made there under, there shall be levied and collected in such manner as may be prescribed duties of excise on, ...
- (d) services provided or rendered in Pakistan
- At the rate of fifty percent ad valorem **except the goods and services specified in the First Schedule, which shall be charged to Federal excise duty as, and at the rates, set-forth therein.** ...*
- (3) The Board may, by notification in the official Gazette, in lieu of levying and collecting under sub-section (1) duties of excise on goods and services, as the case may be, levy and collect duties, ...
- (b) on fixed basis, as it may deem fit, on any goods or class of goods or on any services or class of services, payable by any establishment or undertaking producing or manufacturing such goods or providing or rendering such services. ...
- (4) Without prejudice to other provisions of this Act, the Federal Government may levy and collect duty on any class or classes of goods or services by notification in the official Gazette at such higher or lower rate or rates as may be specified in such notification.
- Explanation: **Subject to sub-section (1), for the purpose of this section, “goods” means the goods specified in CHAPTERS 1 TO 97 and “services” means the services specified in CHAPTER 98 of the First Schedule to the Customs Act, 1969 (IV of 1969).***

In respect of exemptions from the payment of Excise Duty Section 16 of the FEA, 2005 provides that:

- “ ... 16. Exemptions. —
- (1) All goods imported, produced or manufactured in Pakistan and services provided or rendered except such goods and services as are specified in the First Schedule shall be exempt from whole of excise duties levied under section 3:
- Provided that goods and services specified in the Third Schedule shall be exempt from duty subject to such conditions and restrictions, if any, specified therein and no adjustment in terms of section 6 shall be admissible in respect of goods exempt from duty of excise whether conditionally or otherwise.”*

It is therefore apparent that all services, except services as are specified in the First Schedule of the FEA, 2005 are exempt for the levy of excise duty.

<sup>2</sup> While amendments were made to this Section by the Finance Act, 2006, the Finance Act, 2007 and the Finance Act, 2008 none of those amendments have any bearing on the issue to be determined herein which relate to the charge of Federal Excise Duty on “Services” specified under Table II of the First Schedule of the FED Act, 2005.

14. The expression “services” is defined in Sub-Section (23) of Section 2 of the FEA, 2005 as hereinunder:

“ ... *“services” means services, facilities and utilities leviable to excise duty under this Act or as specified in the First Schedule read with Chapter 98 of the Pakistan Customs Tariff, including the services, facilities and utilities originating from Pakistan or its tariff area or terminating in Pakistan or its tariff area”*

This sub-section defines the expression services as used in the FEA, 2005 to mean *any services facilities and utilities that are leviable to excise duty under the FEA, 2005 and additionally defines services as those services that are specified in the Pakistan Customs Tariff*. However, as under Section 16 of the FEA, 2005 all services other than those detailed in the First Schedule of the FEA, 2005 have been exempted from excise duty, on the basis of such exemptions only those services that are detailed in the Pakistan Customs Tariff would be subject to such a levy. Such an interpretation also reads in tandem with the Explanation to Section 3 of the FEA, 2005 and which provides that such “Services” are meant to be *“the services specified in CHAPTER 98 of the First Schedule to the Customs Act, 1969 (IV of 1969)”*

15. The heads of services are identified in Table II of the First Schedule of the FEA, 2005 and Serial No.8, as was relevant to “Non-Banking Financial Companies,” were first inserted into that schedule by the Finance Act 2007 and which read as hereinunder:

S No.	Description of Goods	Heading/Sub-heading Number	Rate of Duty
8.	Non-Fund Services provided by banking companies or non-banking financial companies	98.13	Five percent of the charges.

Through the Finance Act, 2008 the rate of duty was enhanced from “Five Percent” to “Ten Percent” and thereafter, through the Finance Act, 2009, the expression “Non-Fund” was deleted leaving the provision, for the purposes of determining the proceedings in hand, to read as hereinunder:

S No.	Description of Goods	Heading/Sub-heading Number	Rate of Duty
8.	Non-Fund Services provided by banking companies or non-banking financial companies	98.13	Ten percent of the charges.

The corresponding provisions of the Pakistan Customs Tariff under Heading 98.13 are reproduced as hereunder:

Heading	Description
98.13	Services provided or rendered by banking companies, insurance companies, cooperative financing societies, modarabas, musharikas, leasing companies, foreign exchange dealers, <u>non-banking financial institutions</u> and other persons dealing in any such services
9813.1000	Services provided or rendered in respect of insurance to a policy holder by an insurer, including a reinsurer
9813.1100	Goods insurance
9813.1200	Fire insurance
9813.1300	Theft insurance
9813.1400	Marine insurance
9813.1500	Life insurance
9813.1600	Other insurance
9813.2000	Services provided or rendered in respect of advances and loans
9813.3000	Services provided or rendered in respect of leasing.
9813.3010	Financial leasing
9813.3020	Commodity or equipment leasing
9813.3030	Hire-purchase leasing
9813.3090	Other
9813.3900	Services provided or rendered in respect of musharika financing
9813.4000	Services provided or rendered by banking companies in relation to:
9813.4100	Guarantee
9813.4200	Brokerage
9813.4300	Letter of credit
9813.4400	Issuance of pay order and demand draft
9813.4500	Bill of exchange
9813.4600	Transfer of money including telegraphic transfer, mail transfer and electronic transfer
9813.4700	Bank guarantee
9813.4800	Bill discounting commission
9813.4900	Safe deposit lockers
9813.4910	Safe vaults
9813.5000	Issuance, processing and operation of credit and debit cards
9813.6000	Commission and brokerage of foreign exchange dealings.
9813.7000	Automated Teller Machine operations, maintenance and management.
9813.8000	Service provided as banker to an issue
9813.8100	Other
9813.9000	Service provided or rendered by a foreign exchange dealer or exchange company or money changer

16. The manner in which these provisions are to be interpreted have been considered by a Division Bench of this Court in the decision reported as **Citibank NA vs. Commissioner Inland Revenue**<sup>3</sup> wherein while considering the provisions of Entry 98.13 of the Pakistan Customs Tariff in respect of “Non-Fund Banking Services” and where the department were relying on the description in the main heading to impose a levy, it was held that:

“ ... *In our view, when the foregoing points are kept in mind, the primary submission by learned counsel for the Department namely, that it was the description in the principal heading that was operative cannot be accepted. This description was in the following terms:*

<sup>3</sup> 2014 PTD 284



*“ Services provided or rendered by banking companies, insurance companies, cooperative financing societies, modarabas, musharikas, leasing companies foreign exchange dealers, non banking financial institutions and others persons dealing in any such services.”*

*It will be seen that this description only listed the person who were to provide the services enumerated under Heading 98.13. This would satisfy only the first requirement of the definition in Section 2 (16a), since banking companies and NBFIs were listed in the description. However this had nothing to do with the services that were actually liable to duty. The attempt by learned counsel to conclude from the enumeration of the persons that all the services provided by them were included in Heading No. 98.13 cannot be accepted. This would redner itiose the list of specific services in the various sub-headings. Furthermore, this Submission runs counter to the structure of the Pakistan Customs Tariff. As is well known, This is based on and is almost identical to the Harmonized Commodity Description and Coding System ("HS System"), which has been agreed upon under an international convention and which is regulated by the World Customs Organization. The HS System is of course concerned with goods, and it comprises of 97 chapters (with one chapter, 77, being left "blank" for possible future use) wherein all manner of goods are listed and categorized. The Pakistan Customs Tariff faithfully reproduces and gives effect to this system. In addition, the HS System allows two final chapters (i.e., 98 and 99) to be used for national purposes and Pakistan has utilized Chapter 98 for "services". Even a quick glance shows that Chapter 98 replicates the system of classification adopted for goods under the HS System. Now, the chapters of the HS System are preceded by certain "General Rules for the interpretation of the Harmonized System" ("General Rules"). These rules are incorporated in the Pakistan Customs Tariff and therefore have the force of law. Although the rules are concerned with goods, in our view they may, subject to suitable adaptation, also be used for the purposes of Chapter 98. This is so because of the close correspondence between the classification system under the HS System and that used in Chapter 98. Rule 6 of the General Rules has been understood to mean, inter alia, that in those headings under which sub-headings are to be found, the classification is to be on the basis and in terms of the sub- headings. Applying this rule to Heading No. 98.13 leads to the result that it is the sub-headings thereof that are to be applied. This would be conformity with the HS System, and is therefore, in our view, the correct approach to applying Chapter 98. It follows that that submission by learned counsel for the Department, which would lead to the contrary result, is not tenable and cannot, with respect, be accepted.*

17. The order passed by the Division Bench of this Court in **Citibank NA vs. Commissioner Inland Revenue**<sup>4</sup> in this respect have been approved by the Supreme Court of Pakistan in the decision reported as **Messrs Pakistan Television Corporation Limited vs. Commissioner Inland Revenue (Legal) LTU, Islamabad and others**<sup>5</sup> wherein while considering the manner in which Heading 98.12 of Chapter 98 of the Pakistan Customs Tariff was to be interpreted in the context of a levy of excise duty under Section 3 of the FEA, 2005 it was held that:

*“ ... 7. It is worthy to note that none of the forums below, apart from the learned High Court, referred to Section 16 of the Federal Excise Act to support their conclusions. Before examining the provisions of the Federal Excise Act and the rules for interpretation of the PCT it may be pertinent to first address the finding regarding Section 16 *ibid*. The Customs Act, the Sales Tax Act, 1990 (Sales Tax Act) and the Income Tax Ordinance,*

<sup>4</sup> 2014 PTD 284

<sup>5</sup> 2019 PTD 484

2001 (Income Tax Ordinance) have their respective charging sections. Tax is levied on a subject covered by the charging section. All these statutes also have provisions which exempt an assessee from the payment of the whole or a part of the leviable tax. An exemption does not take the assessee out of the scope of the charging section. The assessee remains within the tax net and the tax remains leviable. The assessee is, however, exempt from paying the whole or a part of the tax. If the exemption is withdrawn the leviable tax becomes payable. The scheme of the Federal Excise Act is different. Section 3 of the Federal Excise Act provides that services provided in Pakistan are liable to FED at the rate of 15% ad valorem "except the...services specified in the First Schedule, which shall be charged to Federal excise duty as, and at the rates, set forth therein." Section 16(1) of the Federal Excise Act provides that "All goods imported, produced or manufactured in Pakistan and services provided or rendered except such goods and services as are specified in the First Schedule shall be exempt from whole of excise duties levied under section 3". In other words all services provided in Pakistan are exempt from FED unless specified in the First Schedule to the Federal Excise Act. Even an activity within the definition of "services" under Section 2(23) of the Federal Excise Act is exempt from FED unless specified in the First Schedule. An assessee, therefore, does not have to apply under Section 16 of the Federal Excise Act for exemption. The services provided by the assessee are exempt if not specified in the First Schedule to the Federal Excise Act.

8. Both the Explanation to Section 3 of the Federal Excise Act and the definition of "services" in Section 2(23) thereof make it clear that for an activity to be a service leviable to FED it must be specified in the Federal Excise Act or Table II to the First Schedule thereto read with Chapter 98 of the PCT. The First Schedule to the Federal Excise Act is not to be read in isolation, rather has to be read with Chapter 98 of the PCT. Table II of the First Schedule to the Federal Excise Act broadly identifies the services and mentions the PCT Headings. Item 6 of this Table lists PCT Heading 98.12: Telecommunication Services (including all sub-headings) and states the rate of duty as 17% ad valorem. Item 6 of Table II has to be read with Chapter 98 of the PCT as required by Section 2(23) of the Federal Excise Act and the Explanation to Section 3 thereof. PCT Heading 98.12: Telecommunication Services of Chapter 98 of the First Schedule to the Customs Act is a broad general category. Under it are 65 sub-headings. Like in the orders of the DCIR, CIRA and ATIR there is no discussion in the judgment of the learned High Court on how a Heading of the PCT and its sub-headings are to be read. There is also no discussion about which sub-heading, if any, will cover TV license fee. Only at one place (paragraph No.16) in the judgment, the learned High Court seems to suggest that PCT Heading 9812.9090: "Others" may provide legal cover for the charge of FED on TV license fee.

9. The learned counsel for the respondent did not dispute that Section 2(23) of the Federal Excise Act and the Explanation to Section 3 thereof require that Table II to the First Schedule to the Federal Excise Act must be read with Chapter 98 of the PCT. She, however, vehemently argued that Section 2(23) *ibid* defines services and this definition read with PCT Heading 98.12: 'Telecommunication Services' would cover TV license fee. The main plank of her argument was that only PCT Heading 98.12 was relevant which covered all 'Telecommunication Services'. PTV made telecasts and telecasts were received on TV sets, and telecasts and their reception on TV sets was a 'Telecommunication Service', therefore, it was covered by PCT Heading 98.12. Since TV License Fee was received by PTV, it must, therefore, have been received by PTV for the service of telecast. It was therefore, chargeable to FED under PCT Heading 98.12. All telecommunication services irrespective of their nature and kind, according to her, were covered by PCT Heading 98.12. Even if TV license fee or telecast did not fall within any of the sub-headings of PCT 98.12, the demand survived as it was covered by the main Heading: PCT 98.12. The sub-headings, according to her, were of no consequence. If this argument was accepted to be correct, then the definition of "services" in Section 2(23) of the Federal Excise Act which requires that its First Schedule be read with Chapter 98 of the PCT has to be disregarded. The First Schedule to the Federal Excise Act, in Item 6 of Table II mentions PCT Heading 98.12 and "all sub-headings" in parenthesis. Therefore all the sub-headings of PCT Heading 98.12 are

imported into the definition through The First Schedule to the Federal Excise Act and Chapter 98 of the PCT. If the sub-headings were of no consequence, then there was no need for Parliament to provide that the First Schedule to the Federal Excise Act be read with Chapter 98 of PCT. Equally unnecessary was, the Explanation to Section 3 of the Federal Excise Act, the charging section, which provided that for the purposes of that section "services" meant the services specified in Chapter 98 of the First Schedule to the Customs Act.

10. One may explore the argument of the learned counsel for the respondent further. A number of service providers, activities and services are defined in Section 2 of the Federal Excise Act. 'Telecommunication Services' are not so specified. One must, therefore, proceed to examine the First Schedule to the Federal Excise Act and Chapter 98 of the PCT. Section 3 of the Federal Excise Act is the charging section which levies FED on services provided in Pakistan. The Explanation to the said section makes it clear, however, that services for the purposes of the charging section "mean the services specified in Chapter 98 of the First Schedule to the Customs Act, 1969." FED cannot, therefore, be levied on a service which is not specified in Chapter 98 of the PCT. PCT Heading 98.12 has 65 sub-headings. A close examination of the various sub-headings of PCT Heading 98.12 makes it clear that all these deal with 'Telecommunication Services'. Try as one may, one cannot find that any of these 65 sub-headings cover telecasts, TV sets or TV license fee. At this point it would be relevant to mention Rule 6 of the General Rules for the Interpretation of the First Schedule of the Customs Act, i.e. the PCT, which provides that "For legal purposes, the classification of goods in the sub-headings of a heading except Chapter 99 shall be determined according to the terms of those sub-headings and any related sub-heading Notes and, mutatis mutandis, to the above Rules, on the understanding that only sub-headings at the same level are comparable." Accordingly, not being covered by any of the sub-headings to PCT Heading 98.12 read with Item 6 of Table II of the First Schedule to the Federal Excise Act, telecasts, TV sets and TV license fee are outside the charging provisions of the Federal Excise Act. If one were to accept the argument of the learned counsel for the respondent that only the Heading of PCT 98.12 is to be applied and all its sub-headings are irrelevant, it would render the specific services listed under the 65 sub-headings of PCT Heading 98.12 redundant. If the legislative intent was for PCT Heading 98.12 to cover every conceivable 'Telecommunication Service' there was no need to provide 65 sub-headings, listing specific telecommunication services, under it. It would make the reference to Chapter 98 of PCT in several places by the Federal Excise Act of no consequence or relevance. If the legislature intended PCT Heading 98.12 to have as wide a meaning as ascribed to it by the counsel for the respondent, then there was no need to provide 65 specific sub-headings under this PCT Heading.

11. Even otherwise, it is not possible to accept the argument of the respondent without an unnecessarily strained construction of the Federal Excise Act. The Federal Excise Act is a fiscal statute. The principles of interpreting such statutes are well settled. Some of these principles have been recently repeated in **Messrs Pakistan Television Corporation Vs. Commissioner Inland Revenue (Legal), Islamabad and others (2017 SCMR 1136)** which are summarised as follows:-

- i. There is no intendment or equity about tax and the provisions of a taxing statute must be applied as they stand;
- ii. The provision creating a tax liability must be interpreted strictly in favour of the taxpayer and against the revenue authorities;
- iii. Any doubts arising from the interpretation of a fiscal provision must be resolved in favour of the taxpayer;
- iv. If two reasonable interpretations are possible, the one favoring the taxpayer must be adopted;

v. When a tax is clearly imposed by a statutory provision any exemption from it must be clearly expressed in the statute or clearly implied from it;

vi. Where the taxpayer claims the benefit of such express or implied exemption, the burden is on him to establish that his case is covered by the exemption;

vii. The terms of the exemption ought to be reasonably construed; and

viii. If a taxpayer is entitled to an exemption on a reasonable construction of the law it ought not to be denied to him by a strained, strict or convoluted interpretation of the law

Applying the above principles, it is clear that telecasts, TV sets and TV license fee are not covered by the definition of services in Section 2(23) of the Federal Excise Act and Item 6 of Table II of the First Schedule to the Federal Excise Act read with Chapter 98 of the PCT. At the risk of repetition, TV license fee, telecasts and TV sets not being covered by any of the sub-headings of PCT Heading 98.12 are not subject to FED on a reasonable interpretation of the law. Being plainly outside the ambit of the charging provision they cannot be brought in by a strained construction of the law. The issue may be examined in another manner. As stated above that telecasts, TV sets and TV license fee are not within Table II of the First Schedule to the Federal Excise Act, read with Chapter 98 of the First Schedule to the Customs Act. These are not covered by any of the sub-headings of PCT 98.12. These, are, therefore, exempt from FED under Section 16 of the Federal Excise Act. The appellant is, therefore, exempt from payment of FED on TV license fee. A reasonable interpretation of the law plainly entitles it to such an exemption. It cannot be denied to it by a strained, forced or convoluted interpretation of the law. The conclusion, therefore, remains unchanged. In any case, the demand of FED on TV license fee received by the appellant is, therefore, not legal. The above principles also make clear that the Federal Excise Act being a fiscal statute has to be construed, where possible, in favour of the assessee.

12. This submission of the counsel for the respondent also runs counter to the structure of the PCT. As observed in **Messrs Citibank NA Vs. Commissioner Inland Revenue (2014 PTD 284)**:-

*"This is based on and is almost identical to the Harmonized Commodity Description and Coding System ("HS System"), which has been agreed upon under an international convention and which is regulated by the World Customs Organization. The HS System is of course concerned with goods, and it comprises of 97 chapters (with one chapter, 77, being left "blank" for possible future use) wherein all manner of goods are listed and categorized. The Pakistan Customs Tariff faithfully reproduces and gives effect to this system. In addition, the HS System allows two final chapters (i.e., 98 and 99) to be used for national purposes and Pakistan has utilized Chapter 98 for "services". Even a quick glance shows that Chapter 98 replicates the system of classification adopted for goods under the HS System. Now, the chapters of the HS System are preceded by certain "General Rules for the interpretation of the Harmonized System" ("General Rules"). These rules are incorporated in the Pakistan Customs Tariff and therefore have the force of law. Although the rules are concerned with goods, in our view they may, subject to suitable adaptation, also be used for the purposes of Chapter 98. This is so because of the close correspondence between the classification system under the HS System and that used in Chapter 98. **Rule 6 of the General Rules has been understood to mean, inter alia, that in those headings under which sub-headings are to be found, the classification is to be on the basis and in terms of the sub-headings.***

[Emphasis Supplied]

When this Rule is applied to PCT Heading 98.12 it is absolutely clear that it is the sub-headings under PCT Heading 98.12 that are to be

*applied. Such an approach is in conformity with the HS System, and is, therefore, the correct approach to applying Chapter 98."*

As per the decision of the Division Bench of this Court, as upheld by the Supreme Court of Pakistan, for a service to be subject to a levy of Excise Duty it must, on account of the exemption contained in Section 16 of the FEA, 2005, on account of the definition of the expression "Services" as contained in Sub-Section (23) of Section 2 of the FEA, 2005 and the Explanation given in Section 3 of the FEA, 2005, find mention in one of the Sub-Headings of a Chapter contained in Pakistan Customs Tariff. On this basis alone the contentions of the Department that direct recourse could be made to the Main Heading in terms of charging the levy cannot be accepted.

18. In this context we have considered each of the Sub-Headings under Heading 98.13 of the Pakistan Customs Tariff and note that none of them, as correctly contended by Mr. Jam Zeeshan Ali, relate to services that are provided by a Non-Banking Financial Institution. That being the case we are of the opinion that neither Habib Asset Management Limited nor Alfalah GHP Investment Management Limited were subject to a levy of Excise Duty for services provided by them under the provisions of Section 3 of the FEA, 2005 and on which basis Question No. (b) in I.T.R.A No. 175 of 2012 is answered in the affirmative in favour of Habib Asset Management Limited and as against the Department while Question No. A in Special Federal Excise Reference No.14 of 2016 is answered in favour of Alfalah GHP Investment Management Limited and as against the Department. Consequentially I.T.R.A No. 175 of 2012, which should be renumbered as a Special Federal Excise Reference Application, is dismissed and Special Federal Excise Reference Application No.14 of 2016 is allowed.

19. Let a copy of this order be sent to the Court of the Appellate Tribunal in compliance with the provisions of Sub-Section (5) of Section 34A of the FEA, 2005.

JUDGE

ACTING CHIEF JUSTICE

Karachi dated 16 April 2025