

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

Present:

Yousuf Ali Sayeed, and
Adnan Iqbal Chaudhry, JJ

**C. P. No. D-5721 of 2026
C. P. No. D-6476 of 2026**

Taj Gasoline Limited.....Petitioner

Versus

Federation of Pakistan & others.....Respondents

Qazi Umair Ali, Advocate for the Petitioner.
Syed Ahsan Ali Shah, Advocate for the FBR.
Mehreen Ibrahim, DAG.

Date of hearing : 08.10.2026 and 09.10.2026

JUDGMENT

YOUSUF ALI SAYEED, J.- The Petitioner, a public limited oil market company (formerly Taj Gasoline (Private) Limited), has invoked the jurisdiction of this Court under Article 199 of the Constitution, impugning certain Notices issued by the Second Secretary (ST-Operations-II), Federal Board of Revenue (the “**FBR**”), whereby officers of Inland Revenue were posted at the its business premises, ostensibly under Section 40B of the Sales Tax Act, 1990 and Section 45(2) of the Federal Excise Act, 2005 (hereinafter referred to as the “**STA**” and “**FEA**” respectively).

2. The sequence of events underpinning the Petitions commences with a Notice dated 02.07.2026, whereby officers of Inland Revenue were posted at the Petitioner's premises to "monitor production, supplies and the stock position" till 02.08.2026. That posting was continued by a Notice dated 31.07.2026 up to 02.09.2026, and again by a further Notice dated 01.09.2026 with effect from 03.09.2026 up to 02.10.2026. Those three Notices were assailed by the Petitioner through C.P. No. D-5721 of 2026. The Respondents filed their comments in that matter on 29.09.2026, and it was fixed for hearing on 08.10.2026, by which time yet another Notice bearing C. No. 1(8)SS(ST-OPS-II)40B/RTOs/2026/PT-I/110388-R dated 01.10.2026 had been issued, with effect from 03.10.2026, for a further period of one month (i.e. up to 02.11.2026), prompting C. P. No. D-6476 of 2026, as presented on 05.10.2026. It is common ground that, apart from a reference in its opening paragraph to a letter dated 29.09.2026 of the Chief Commissioner Inland Revenue, RTO Sukkur, the contents of which it does not disclose, the fourth Notice is identical in its terms to the earlier Notices, in as much as, like them, it does not state why the monitoring is required or why it is to continue.
3. As it is the fourth Notice (i.e. dated 01.10.2026) which holds the field, the arguments advanced in relation to the ongoing monitoring gravitated around its issuance in the context of the preceding notices, with learned Counsel being heard and the record examined accordingly with their assistance.

4. Proceeding with his submissions, learned counsel for the Petitioner argued in line with the case set up through the pleadings, submitting that the Petitioner had throughout cooperated with the officers posted, furnishing daily reports, granted the FBR team online access to its accounting software, hosted a visit by a senior team at its Head Office, and delivered its physical records; but despite the lapse of over three months, no discrepancy, irregularity or suppression had been pointed out and no report had been finalized; yet the posting was being perpetuated further for no discernible purpose and with no end in sight. He contended that:

- (i) the Impugned Notices disclose no object, ground or purpose for the monitoring, nor any reason for the extensions, contrary to the law enunciated by the Supreme Court in Commissioner Inland Revenue v. Pakistan Beverages Limited 2018 SCMR 1544 (“**Pakistan Beverages**”) and by this Court in H.M. Motors v. Federation of Pakistan (C.P. No. D-5496 of 2025, decided on 22.06.2026) (“**H.M. Motors**”);
- (ii) the conditions prescribed, which include reconciliation against third-party records, access to the Petitioner’s data servers, estimation of suppression and recovery of tax, are in substance matters of an audit or assessment, and cannot be pursued under the guise of monitoring;
- (iii) the primary business of the Petitioner, being the supply of petroleum products falling at Serial 176 of the Sixth Schedule to the STA, is exempt from tax, so that the provisions invoked, which relate to taxable goods, have no application;
- (iv) the continued posting infringes the Petitioner’s rights under Articles 4, 5 and 10A of the Constitution, and its rights to carry on lawful trade, to dignity and privacy of business affairs, and to property

5. For his part, learned counsel for the FBR adopted the comments filed by in C.P. No. D-5721 of 2026 as also covering the latter Petition. He contended that the Petitions were misconceived; that Section 40B is a monitoring provision and not a charging provision, so that the exemption of a supply under Section 13 of the STA does not oust the power conferred on the Board in respect of a registered person; that the Respondents do not contend that Section 40B converts exempt supplies into taxable ones, but are entitled to verify whether taxable goods are being produced, sold or stocked, and whether taxable and exempt goods are being mixed; that the monitoring arose from scrutiny in June 2026, which showed the Petitioner's carried-forward input tax growing from Rs. 128.222 million in March 2022 to Rs. 519,322,891 in June 2026, although its principal supplies are exempt; that the Petitioner is also engaged in the sale of lubricants, which is liable to sales tax, and there are indicators of false input tax claims made without proper apportionment; and that the Respondents had issued the Notices in question for due cause on the basis of tangible material. Reliance was also placed on the judgment of the Supreme Court in the matter reported as Commissioner Inland Revenue, Regional Tax Office, Peshawar v. M/s Shah Traders Ghurgoshti, Swabi 2025 SCMR 2016 ("**Shah Traders**").
6. As the Impugned Notices purport to have been issued in exercise of power under Section 40B of the STA and Section 45(2) of the FEA, it is appropriate to reproduce the relevant provisions.

Section 40B, as it presently stands, reads thus:

“40B. Posting of [Inland Revenue] Officer.— Subject to such conditions and restrictions, as deemed fit to impose, the [Board], may post Officer of [Inland Revenue] to the premises of registered person or class of such persons to monitor production, sale of taxable goods and the stock position.”

In the same vein, Section 45(2) provides that:

“(2) Subject to such conditions and restrictions, as deemed fit to specify, the Board may, post [officer of Inland Revenue] to the premises of registered person or class of such persons to monitor production, removal or sale of goods and the stock position or the maintenance of records.”

7. The scope of the power conferred by Section 40B was authoritatively considered by the Supreme Court in *Pakistan Beverages*, where it was held that the law recognizes no such thing as an unfettered discretion, and that a discretionary statutory power can only be exercised on a ground or to achieve an object or purpose that is lawfully within the contemplation of the statute. The Court went on to observe that the power under the section had been granted to “monitor” the production, sale of taxable goods and stock position, but that:

“... the monitoring can only be for some object, ground or purpose that is legitimately and lawfully within the contemplation of the 1990 Act. ... But the monitoring is not intended to be indefinite. ... Once the purpose has been served or object achieved or the ground stands exhausted, the monitoring must come to an end. However, it cannot be left to the unfettered discretion of the Board, the Chief Commissioner or the Commissioner (as the case may be) to determine when the purpose has been served or object achieved.”

8. The Court affirmed that the exercise of the power is time bound in the sense that some timeframe or period must be given in any order made under the section, and added that it would always be open to the authority to reassess the situation at or near the conclusion of the period; that if there were legitimate grounds for extension a further period might be granted; and that it would equally be open to the concerned person to challenge any exercise of the power or any extension of the period in accordance with law.
9. A Division Bench of this Court in H.M. Motors has since applied those principles. After reproducing Section 40B, the Bench observed that the right to post officers is “not unfettered”; that the section commences with the words “Subject to such conditions and restrictions”; and that, as sustained in Pakistan Beverages, monitoring “must be for a specific purpose within contemplation under the STA (e.g. tax evasion or fraud)” and a timeframe must be included, which may subsequently be revisited. The order there under challenge was declared void as it stated no specific objectives, no timeframe, and no conditions and restrictions covering the posting, and the contention that the FBR was under no obligation to disclose reasons or a timeline was held to be contrary to both the letter and spirit of the section. We are, of course, bound by the principles laid down in that matter.
10. The question that thus arises for consideration is whether a notice extending the posting of officers at a taxpayer’s premises, which recites no purpose for the monitoring and no ground for its continuation beyond the statutory formula, can be sustained in light of the aforementioned principles?

11. It was not disputed that the Notice dated 01.10.2026 repeats the language of the earlier Notices, adding only a reference to the letter of the Chief Commissioner dated 29.09.2026, to which we shall presently turn. The only expression of object is that the officers are posted “to monitor production, supplies and the stock position”, which is no more than a paraphrase of the Section itself. To our minds, a mere statement of the power being exercised is not a statement of the purpose for which it is being exercised. Were it otherwise, the requirement that monitoring be directed to an object or ground within the contemplation of the statute would be reduced to an empty formality, satisfied in every case by the recital of the power. The Court in *H.M. Motors* required a specific objective, and that requirement is not met by a recital which would apply with equal force to every other registered person. The Respondents themselves accept, in their comments, that where section 40B is invoked against a taxpayer who claims exemption, the order should clearly identify the statutory purpose and specify the monitoring period.
12. The Respondents have, in their comments, set out a fuller explanation, with it being said that the Petitioner’s case came under scrutiny in June 2026; that its carried-forward input tax, which stood at Rs. 128.222 million in March 2022 when sales tax was withdrawn from the major petroleum products, had risen to Rs. 519,322,891 by June 2026, although its principal supplies are exempt; that the Petitioner also sells lubricants, which are liable to sales tax, and pays only nominal tax on them; and that that there are indicators of false claims of input tax made without proper apportionment. We do not doubt that a concern of that

nature, if founded on material, may constitute a purpose lawfully within the contemplation of the STA, and we express no view on the merits of the allegations. However, as things stand, none of this appears in the Notice dated 01.10.2026 or in any of the Notices that preceded it, which, as observed, mechanically reiterate the language of the statute. As such, the assertion in the comments that the earlier Notices have “proper reasons assigned” cannot be reconciled with their text, and the comments cannot fill a gap in the Notices themselves. Nor is it of any avail to the Respondents to say that the reason existed on the departmental file when the Notices were issued. A reason that is held back from the person whose premises are occupied is no answer. The requirement that monitoring rest upon a lawful purpose, and that any extension rest upon legitimate grounds, exists so that the exercise of the power can be tested. A reason that is not disclosed can neither be tested by the taxpayer nor by this Court, and to permit it to be withheld would defeat the very purpose of requiring a valid reason in the first place.

13. It merits consideration that the Notice dated 01.10.2026 is the fourth in a series such instruments. The first of the Notices prescribed a period of one month, and each of the subsequent ones renewed it for a like period, in identical terms. We have no doubt that a fixed period satisfies the requirement of a timeframe, and that, as held in *Pakistan Beverages*, the authority is entitled to reassess the situation and to extend the period where there are legitimate grounds for doing so. Nor do we hold that monitoring of a given duration is, by reason of duration alone, unlawful. The difficulty lies elsewhere. The Supreme Court made the power of extension conditional upon the existence of legitimate grounds

and made the extension itself open to challenge. That safeguard would be rendered illusory if the grounds, if any, were never disclosed. The Notice dated 01.10.2026 does not state what the first three months of monitoring have disclosed, what remains to be accomplished, or why a further month is required.

14. As regards section 45(2) of the FEA, we note that the Supreme Court in *Pakistan Beverages* expressly refrained from deciding the construction of that provision, as it was not directly in issue. That provision, however, is framed in terms that are, in all material respects, the same as those of Section 40B, commencing with the identical qualification that the power is exercisable “subject to such conditions and restrictions”, and the Impugned Notice invokes both provisions in a single breath and for a single purpose. No ground was suggested, and we can conceive of none, on which the power to post officers under the FEA could be exercised free of the requirements that attend its counterpart in the STA, and the same reasoning must therefore apply.
15. The Respondents have placed reliance in their comments on *Shah Traders*, which addresses the class of persons to whom the section may apply, and does not bear on the requirement of a purpose and of grounds for continuance. The question is not whether the power exists in relation to the Petitioner, but whether it has been lawfully exercised. In our view, under the given circumstances, the Notices run contrary to the principles laid down in *Pakistan Beverages* and *H.M. Motors* and constitute an abuse of statutory power.

16. As such, the Petitions are accordingly allowed, with the subsisting Notice dated 01.10.2026 being set aside and it being directed that the officers posted at the Petitioner's premises in pursuance thereof be withdrawn forthwith. Needless to say, the Respondents shall be at liberty, if so advised and if there exist legitimate grounds for doing so, to pass a fresh order in accordance with law, which shall specify the purpose for which monitoring is considered necessary, the period for which it is to continue, the conditions and restrictions applicable, and, thereafter, the reasons for any extension.

JUDGE

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