

IN THE HIGH COURT OF SINDH, KARACHI

Present:

Mr. Justice Adnan Iqbal Chaudhry
Mr. Justice Muhammad Jaffer Raza

1.	Const. P. 1783/2025	M/s Fashion Knit Industries & Ors VS Federation of Pakistan & Others
2.	Const. P. 1802/2025	Premium Textile Mills Ltd & Ors VS Federation of Pakistan & Others
3.	Const. P. 1808/2025	Anwar Textile Mills Ltd & Ors VS Federation of Pakistan & Others
4.	Const. P. 1809/2025	Al- Karam Towel Ind. & Ors VS Federation of Pakistan & Others
5.	Const. P. 1815/2025	M/s International Steels Ltd VS Federation of Pakistan & Others
6.	Const. P. 1821/2025	M/s Uni Bro Industries Ltd VS Federation of Pakistan & Others
7.	Const. P. 1822/2025	Gatron (Industries) Mills Ltd & Ors VS Fed. of Pakistan & Ors
8.	Const. P. 1823/2025	M/s Akhtar Textile Industries (Pvt) Ltd & Ors VS Federation of Pakistan & Others
9.	Const. P. 1824/2025	M/s Kompass Pakistan (Pvt) Ltd & Ors VS Federation of Pakistan & Others
10.	Const. P. 1828/2025	M/s Pakistan Cables Ltd VS Federation of Pakistan & Others
11.	Const. P. 1833/2025	M/s International Industries Ltd VS Federation of Pakistan & Others
12.	Const. P. 1834/2025	M/s English Biscuit Manufacturers (Pvt) Ltd & Ors VS Federation of Pakistan &
13.	Const. P. 1838/2025	Mehran Plastic Industries & another VS Federation of Pakistan &
14.	Const. P. 1839/2025	Pakola Products Ltd VS Federation of Pakistan & Others
15.	Const. P. 1840/2025	Pakistan Beverages Ltd VS Federation of Pakistan & Others
16.	Const. P. 1863/2025	Ismail Industries (Pvt) Ltd & Ors VS Federation of Pakistan & Others
17.	Const. P. 1867/2025	M/s Pakistan Oil Mills (Pvt) Ltd VS Federation of Pakistan & Others
18.	Const. P. 1874/2025	Faiz Enterprises (Pvt) Ltd & Ors VS Federation of Pakistan & Others
19.	Const. P. 1887/2025	M/s Ana & Balta Industries (Pvt) Ltd & Ors VS Federation of Pakistan & Others
20.	Const. P. 1907/2025	Adnan Apparel VS Federation of Pakistan & Others
21.	Const. P. 1945/2025	Polani Textile & Ors VS Federation of Pakistan & Others
22.	Const. P. 1971/2025	M/s Lakhany Silk Mills (Pvt) Ltd & Ors VS Federation of Pakistan & Others
23.	Const. P. 2076/2025	Mirtex International Co. & another VS Federation of Pakistan &
24.	Const. P. 2322/2025	M/s Century Engineering Industries Pvt Ltd VS Federation of Pakistan & others

25.	Const. P. 3798/2025	M/s Tri-pack Films Limited VS Federation of Pakistan & others
26.	Const. P. 3932/2025	Muhammad Makki & Co VS Federation of Pakistan & others
27.	Const. P. 4046/2025	Al Karam Towel Industries Private Limited & others VS Federation of Pakistan &
28.	Const. P. 4152/2025	Pakola Products Ltd VS Federation of Pakistan & Others
29.	Const. P. 4153/2025	Pakistan Beverages Ltd VS Federation of Pakistan & Others
30.	Const. P. 4258/2025	M/s United Gypsum Pvt Ltd VS Federation of Pakistan & others

Petitioners: (in all petitions)	Through M/s. Ovais Ali Shah, Jawad A. Qureshi, Yousuf Khalid Anwer, Ali Nawaz Khuhawar, Jahanzeb Balouch, Syed Mohsin Ali, Arshad Hussain, Ali Raza Lanjar, Zeeshan Naeem, Abdul Karim Khan, Sunder Lal Lohana, Muhammad Ahmed Hussain, Akhtar Ali Memon, Advocates.
Respondent No. 1: (in all petitions)	Through Mr. Mohsin Kadir Shahwani, Additional Attorney General & Ms. Mehreen Ibrahim, Deputy Attorney General.
Respondents No. 2 & 3: (in all petitions)	Through M/s. Kashif Hanif, Ghazi Khan Khalil, Ameer Nausherwan Adil Memon, Asim Iqbal, Farmanullah Khan, Syed Kumail Abbas Naqvi, Zeeshan Ahmed, Aftab Ali, Sarmad Ali, Syeda Maryam Advocates for the Respondents
Date of hearing:	11.11.2025

JUDGMENT

Muhammad Jaffer Raza, J: The Petitioners in all the above noted petitions are consumers of natural gas and operate Captive Power Plants¹ (“CPP”) as defined under Off the Grid (Captive Power Plants) Levy Ordinance, 2025 (“Ordinance”) and the legislation that repealed it on 01.07.2025, namely Off the Grid (Captive Power Plants) Levy Act, 2025 (“Act”). The Petitioners through the noted petitions have challenged bills² issued by Respondent No.3 (SSGC) for collecting the levy³ for a period prior to notification dated 07.03.2025, whereby the rate of the levy was first notified. The notification dated 07.03.2025 was issued under section 3 of the Ordinance, whereafter the CPPs were first billed in May 2025 for gas consumed in February. Thereafter, pursuant to the second notification dated 23.07.2025, issued under section 3 of the Act, the CPPs were also billed for gas consumed from 01.03.2025 to 06.03.2025, the un-billed period prior to the notification dated 07.03.2025. Whilst the said notifications (“Notifications”) set a different rate for the levy, the legal premise advanced by the Petitioners remains unchanged. The scope of the present adjudication is restricted to the imposition of what the learned counsels classify as a “retrospective levy”.

2. Without intending any disrespect, the arguments of the counsels⁴ appearing for the Petitioners shall be recorded conjunctively for the sake of brevity. It has been contended by the learned counsels, that the bills issued in the month of May, and in some cases in the month of August, impose the levy for the month of February and March respectively, under the rate notified in the Notifications. The same, according to learned counsels, is retrospective as

¹ 2. Definitions.— In this Ordinance, unless there is anything repugnant in the subject or context, (c) “captive power plant” means an industrial undertaking or unit carrying out the activity of power production (with or without co-generation) for self-consumption or for sale of surplus power to a distribution company or a bulk-power consumer;

² The vires of the Act have been challenged in separate petitions by some of the Petitioners herein. The same is outside the scope of the present deliberation as the same shall be confined to the parameters noted in the instant judgment.

³ 2. Definitions.— In this Ordinance, unless there is anything repugnant in the subject or context, (e) “levy” means an off the grid levy chargeable from natural gas or RLNG based captive power plants under section 3 of this Ordinance;

⁴ Led by Ovais Ali Shah, Jawad A. Qureshi and Ali Nawaz Khuhawar, advocates.

the billing period of February and March 2025 was prior to issuance of Notifications on 07.03.2025 and 23.07.2025. In the same vein, it was contended that the Notifications do not provide for any retrospective application and neither do the said Notifications specify the period or month to which they apply. Extending the argument further, the learned counsels contended that sections 3 and 4 of the Ordinance/Act do not envisage any retrospective imposition of levy, as the same can only be imposed prospectively, subject to the outcome of the petitions challenging the vires of the Ordinance/Act.

3. On the legal premise, the learned counsels have argued that the levy is confiscatory in nature and retrospective applicability of the same is impermissible. During the course of arguments, the learned counsels have specified that they are, for the purposes of the present petitions only, not aggrieved with the rate notified in the Notifications and wish to restrict the present petitions to the retrospective application/imposition of that rate. Learned counsels have lastly averred that ambiguity, if any, in a fiscal statute, ought to be interpreted in favour of the taxpayer.

4. Conversely, learned Additional Attorney General of Pakistan has submitted that the imposition of the levy cannot be classified as retrospective, as the same was imposed after passing of the respective Ordinance/Act and under the Notifications issued thereunder. It is further contended that the Notifications only notify the rate on which the levy is to be calculated and by themselves do not impose the same. Hence, the contention raised by the Petitioners in this regard is, in his view, untenable, legally unsound, warranting dismissal of the noted petitions.

5. Learned counsels⁵ appearing on behalf of Sui Southern Gas Company Limited (“**SSGC**”) have contended that they are representing the Agent⁶ in these petitions and are bound by the directions of the regulator i.e. Oil and Gas Regulatory Authority (“**OGRA**”). They have further stated that the responsibility and task of the Agent is mandated under section 3 (2) of the Ordinance/Act, stipulating therein, billing of the levy to the CPP and its collection and onward payment to the Federal Government.

6. The learned counsel appearing for OGRA raised arguments similar to those recorded above on behalf of the Respondents and further highlighted the mechanism under Section 4 for determination of the rate of levy. He contended that the determination of the rate of levy, by design, can only be retrospective.

7. We have heard all the learned counsels for the respective parties on the limited scope of the present petitions, as identified above. For effective adjudication the following question is framed: -

i. Whether the levy under the Ordinance/Act can be imposed for a period prior to issuance of notification dated 07.03.2025 when rate of levy was first notified?

8. To answer the noted question, it will first be imperative to examine the scheme of Sections 3 and 4 of the Ordinance/Act. The noted sections, which are substantially identical in the Ordinance and Act, are reproduced below: -

“3. Imposition and collection of levy.

(1) Subject to section 4, every captive power plant shall pay to the Federal Government a levy on consumption of natural gas or RLNG, over and above the sale price notified under section 8 and section 43B of the Oil and Gas

⁵ Led by Ghazi Khan Khalil, advocate.

⁶ 2. Definitions. — In this Ordinance, unless there is anything repugnant in the subject or context, (a) “agent” means an entity specified in the Schedule;

SCHEDULE

[see section 2(a)]

1. Sui Northern Gas Pipelines Limited.
2. Sui Southern Gas Company Limited.
3. Any other company engaged in sale of gas to captive power plants as may be notified in the official Gazette.

Regulatory Authority Ordinance, 2002 (XVII of 2002), at such rate as notified by the Federal Government in the official Gazette, from time to time; (2) The agent shall be responsible for billing of levy to captive power plants, its collection and onward payment to the Federal Government in the manner as may be prescribed.

4. Calculation of rate of levy.

Before notifying the levy under sub-section(l) of section 3, the divisions concerned under the Rules of Business, 1973 shall calculate the rate of levy by taking into account the difference of power tariff of industrial B3 category, notified by NEPRA, and the self-power generation cost of the captive power plant at the gas tariff notified by OGRA;

Provided that the rate of levy shall be increased by five percent immediately and further increased to ten percent by July, 2025, fifteen percent by February, 2026 and twenty percent by August, 2026.”

9. Prior to adjudicating the question noted above, it will be beneficial to highlight the scheme of the sections reproduced above. It is evident from a plain reading of Section 3 that the same imposes a levy on the consumption of gas on every CPP at the rate to be notified by the Federal Government. The subsequent section provides the mechanism to determine the said rate, which consequent to that determination, is notified in the official gazette. Therefore, the imposition of levy under Section 3 is entirely dependent on the calculation of that levy under Section 4. The words “*Subject to section 4*” further buttress the deduction made in the instant paragraph.

10. For the purposes of the present petitions, it is evident that the exercise to determine the rate under Section 4 culminated in issuance of the Notifications, the earliest one dated 07.03.2025. The question, as noted above, is whether the levy could have been imposed prior to the said date or for a period prior to the said date, keeping in view the crucial aspect that the noted sections do not provide specifically for imposition or collection of that levy retrospectively.

11. It is a settled principle of law⁷ that statutory notifications cannot operate retrospectively in the absence of any express authorization from the

⁷ Army Welfare Sugar Mills versus Federation of Pakistan reported at 1992 SCMR 1652.

legislature, except if they are beneficial or procedural in nature. In paragraph No.21 the Hon'ble Supreme Court in the case of Army Welfare Sugar Mills expounded the said proposition categorically in the following words: -

"21. It seems to be well-settled proposition of law that a notification which purports to impair an existing or vested right or imposes a new liability or obligation, cannot operate retrospectively in the absence of legal sanction, but, the converse i.e. a notification which confers benefit cannot operate retrospectively, does not seem to be correct proposition of law."

12. A learned Division Bench of this court, in somewhat similar circumstances, in the case of Sindh Petroleum, was seized with petitions challenging a notification issued by OGRA determining the sale price of natural gas to various categories of retail consumers. In respect to the notification impugned therein applying retrospectively, the learned Division Bench held as under: -

*"33. The principle of *nova constitutio futuris formam imponere debet, non praeteritis* denotes that a new law ought to regulate what is to follow and not the past. Mian Saqib Nisar, J (as he then was) deliberated upon the effect of this principle, in *Zila Council Jhelum v. Pakistan Tobacco Company Limited* and another reported as PLD 2016 SC 398, and observed, in the context of statutes, that a statute cannot be applied retrospectively in the absence of an express enactment or necessary intendment, especially where it may effect vested rights, past and closed transactions or facts or events that have already occurred.*

In the present facts and circumstances it is not a statute itself but a notification that seeks to take effect retrospectively. No provision of the governing statute, or rules made pursuant thereto, has been highlighted before us to demonstrate the existence of any provision empowering the notification of prices with retrospective effect. Therefore, it is our considered view that the Impugned Notification would take effect from the date that it was notified.

(Emphasis added)

Anoud Power Generation versus Federation of Pakistan reported at **PLD 2001 SC 340**. The judgement rendered in the case of Army Welfare Sugar Mills (supra) was relied upon in the instant judgment.

Government of Pakistan versus Village Development Organization reported at **2005 SCMR 492**. Sindh Petroleum and CNG Dealers Association versus Federation of Pakistan reported at **2020 CLC 851**. The noted judgment was followed by another Division Bench in the case of Suraj Cotton Mills Ltd. in **CPD No.265/2024** and other connected petitions. The judgement in Suraj Cotton Mills (supra) was upheld by the Hon'ble Supreme Court vide order dated 22.11.2024 in **Civil Petitions No.3410 to 3471 of 2024**.

13. At this juncture and in light of the pronouncements noted above, it will be imperative to deliberate on the language of the Notifications to decipher whether the same are intended to be applied retrospectively. It is apparent from the perusal of the said Notifications that the same do not encompass a retrospective application and are silent in terms of the period for which the rate has been notified. The same, read with the language of Sections 3 and 4, which does not envisage retrospective imposition of the levy, leads to the inevitable conclusion that the Notifications were intended to be applied prospectively and not to gas consumed prior to 07.03.2025.

14. It is further apparent from the perusal of the record before us that an uncertainty regarding the application of the levy retrospectively, persisted with Respondent No.1 (Ministry of Energy). In this regard our attention was invited to letter dated 11.04.2025⁸ directing the Agents to recover the levy for the month of February and March. In another letter issued on the same day, the earlier letter directing the Agents to impose the levy was withdrawn. Thereafter, vide letter dated 18.04.2025 the Agents were informed that that whilst the Notification dated 07.03.2025 was still in filed, an opinion has been sought from the Law and Justice Division and Attorney General's office regarding retrospective application of the same. Subsequently, vide letter dated 02.05.2025 the Agents were informed to collect the notified levy from the consumers. It is only after the noted letter that the bills under challenge were issued to the Petitioners. In this regard we agree with the contention of the Petitioners counsels that doubt, if any, arising in the interpretation of any fiscal provision, must be resolved in favour of the taxpayer⁹.

⁸ The noted letter was issued after the Islamabad High Court vacated the interim stay granted earlier in Writ Petition No.1185/2025.

⁹ Messers Pakistan Television Corporation Limited versus Commissioner Inland Revenue (Legal) LTU, Islamabad and others reported at **2019 SCMR 282**.

Chairman Federal Board of Revenue, Islamabad versus Messers Al-Technique Corporation of Pakistan Ltd. and others reported at **PLD 2017 Supreme Court 99**.

15. The argument advanced by the Respondents that liability of the CPP's to pay the levy came into effect immediately after the promulgation of the Ordinance, is misconceived for the reason that the Ordinance by itself never determined the rate of the noted levy. The levy was to be calculated in accordance with the mechanism envisioned under Section 4. The same only became operational **after** the calculation was made under Section 4 and the said calculation was notified under Section 3. Therefore, the date from which the levy could have been legally imposed was a date **after** the rate was notified under Section 3.

16. In light of what has been held above, it is declared that bills issued to the Petitioners by the SSGC for collecting the levy retrospectively for the period prior to 07.03.2025 were/are ultra vires sections 3 and 4 of the Ordinance/Act. Consequently, if SSGC has collected such amount from any Petitioner, it shall credit the same in the next bill. If any Petitioner has deposited or secured said amount with the Nazir of this Court, same shall be returned to that Petitioner. Disposed of.

Signed on 12.01.2026

J U D G E

J U D G E

Arshad/