ORDER SHEET

IN THE HIGH COURT OF SINDH AT KARACHI

Suit No.330, 358 & 359 of 2017

DATE	ORDER WITH SIGNATURE OF JUDGE

Suit No.330 of 2017

For hearing of CMA No.1828/17 (U/O 39 Rule 1 & 2 CPC)

Suit No.358 of 2017

For hearing of CMA No.2030/17 (U/O 39 Rule 1 & 2 CPC)

Suit No.359 of 2017

For hearing of CMA No.2032/17 (U/O 39 Rule 1 & 2 CPC)

Dates of Hearing: **4.5.2018, 11.05.2018, 30.05.2018 & 01.06.2018**

Date of Order: **20.06.2018**

Mr. Hyder Ali Khan, Advocate for Plaintiff (**M/s Hum Network Limited**) in Suit No.330/2017.
Dr. Farogh Naseem, Advocate for Plaintiffs (**M/s Independent Media Corporation Private Limited**) in Suit No.358/2017 and 359/2017.
Mr. Kafeel Ahmed Abbasi, Advocate for Defendants/Commissioner LTU in Suit Nos.330 & 358 of 2017.
None for Defendant / Commissioner LTU in Suit No.359/2017
Mr. Umar Zad Gul Kakar, DAG.

Muhammad Junaid Ghaffar J. These are three applications under Order 39 Rule 1 & 2 CPC in all these three Suits, which are being fixed together and involve a common issue, therefore, are being decided through this common order.

2. The precise relevant facts are that all Plaintiffs are Media Channels on which advertisements are being run and there are three parties involved in this transaction i.e. the Plaintiff, the Advertising Agent and Advertiser or commercial entity whose advertisements are aired. The Plaintiffs sell their advertisement space to the advertisers, who wish to place advertisement on the

Plaintiffs' Satellite Channels. All Plaintiffs have been issued Show Cause Notices and the common ground of the Defendants is that they have claimed expenses under the Head Agency Commission, which is liable to withholding tax under Section 233 of the Income Ordinance 2001 and the withholding statements filed by them under Section 165 (ibid) do not reflect that any withholding tax has been deducted under Section 233 on such agency commission, whereas, failure to deduct such tax leads the expenses as not allowable under Section 21(c) of the Ordinance 2001. For ease of reference the relevant portion of the impugned Show Cause Notices in all three Suits are reproduced and reads as under:-

Suit No. 330/2017

"As per Note 19 of the Audited Statement of Account, you have claimed expenses under the head Agency Commission amounting to Rs.487,900,242/- which is liable to withholding tax u/s 233 of the Income Tax Ordinance, 2001. The withholding statement u/s 165 of the Income Tax Ordinance, 2001 filed for the year do not reflect any withholding tax deducted u/s 233 of the Ordinance on Agency Commission amounting to Rs.48,790,024/-. Failure to deduct tax u/s. 233 of the Ordinance leads the expense amounting to Rs.487,900,242/- not allowable u/s 21(c) of the Income Tax Ordinance, 2001."

Suit No. 358/2017

"1. As per Note 19 of the Audited Statement of Account, you have claimed expenses under the head Agency Commission amounting to Rs.989,083,367/- which is liable to withholding tax u/s. 233 the Income Tax Ordinance, 2001 filed for the year does not reflect any withholding tax deducted u/s. 233 of the Ordinance on Agency Commission amount to Rs.98,908,336/-. Failure to deduct tax u/s. 233 of the Ordinance leads the expense amounting to Rs.989,083,367/- not allowable u/s 21(c) of the Income Tax Ordinance, 2001."

Suit No. 359/2017

"1. As per Note 23 of the Audited Statement of Account, you have claimed expenses under the head Agency Commission amounting to Rs.1,103,259,000/- which is liable to withholding tax u/s. 233 of the Income Tax Ordinance, 2001. The withholding statement u/s 165 of the Income Tax Ordinance, 2001 filed for the year do not commensurate with the withholding tax deducted u/s. 233 of the Ordinance on Agency Commission amounting to Rs.41,084,334/. Failure to deduct tax u/s. 233 of the Ordinance leads the expense amounting to Rs.1,103,259,000/- not allowable u/s. 21(c) of the Income Tax Ordinance, 2001. For the sack of reference the relevant provisions of section 233 are reproduced here under:-

3. Though there are other allegations as well, however, the Plaintiffs have only impugned the above portion of respective Show Cause Notices, whereas, while passing interim orders, the Court had also directed the Plaintiffs to file their reply in respect of other allegations which are not presses and are part of the Show Cause Notices, whereas, to the above extent, the Defendants were restrained from passing any final orders.

4. Dr. Farogh Naseem appearing on behalf of Plaintiffs in Suit Nos.358 & 359 of 2017 has contended that the department while issuing Show Cause Notices has also relied upon some judgment passed by the Appellate Tribunal Inland Revenue Islamabad in the case of PTV Islamabad V. CIR LU Islamabad in ITA No.923 to 928/IB/2011 dated 09.03.2015, which Judgment according to the learned Counsel has been overruled by the Hon'ble Supreme Court in the case reported as (**2017 SCMR 1136**) ***(Messrs Pakistan Television Corporation Limited v. Commissioner Inland Revenue (Legal) LTU, Islamabad and others),*** therefore, according to the learned Counsel the Show Cause Notice is liable to be vacated. He has further contended that the impugned Show Cause Notices are without lawful authority and jurisdiction and so also bad in law, as they have been issued on some wrong assumption of facts as well as law. According to the learned Counsel, the then Central Board of Revenue under the erstwhile Income Tax Ordinance, 1979, had issued Circular No.29 of 1999 dated 16.11.1999, whereby, the issue of deduction of tax from advertising agencies was resolved in the manner that the Customer/Advertiser was required to make payment in two parts, one for the advertising agency for its commission amount of 15% of the total payable amount and other for the balance 85% to the

media house/plaintiffs, whereas, the deduction of tax in respect of both these payments was to be done by the advertiser. Per learned Counsel after promulgation of 2001 Ordinance, there was some confusion as to the applicability of this Circular, and therefore, a Clarification dated 2.2.2009 was issued by FBR in which the contents of the said Circular were reiterated and the same still holds field and is being followed by all three parties involved in this transaction. Therefore, according to the learned Counsel, the contention of the department is misconceived as the Plaintiffs are not making any payment to the advertising agency or for that matter receiving any payment or commission from the advertising agencies; hence the question of deduction of any tax and in failure to do so addition of any amount in the income does not arise. Learned Counsel has also referred to the Financial Statements in question for the tax year in dispute, and has further contended that even on facts, the department has erred by picking up the amount shown under the head of Revenue by treating the same as an expense of agency commission, and thereafter, disallowing the same as an expense for alleged failure to deduct advance tax and in fact has treated the entire amount of revenue as income, which has already been taxed. In view of such position, learned Counsel has contended that the department has acted without lawful authority and jurisdiction, hence the impugned Show Cause Notices to the above extent be set-aside or in the alternative, department be restrained from proceeding any further.

5. Mr. Hyder Ali Khan, learned Counsel for the Plaintiff in Suit No.330/2017 has adopted the arguments of Dr. Farogh Naseem and in addition has contended that it is the entire responsibility

of the Advertiser/Customer to deduct tax while making payment to the advertising agency of the 15% amount of commission and to the Plaintiffs of the remaining 85% of the amount involved and in his case advertiser has already acted accordingly. To support his contention he has referred to Page 453, which is a Statement giving particulars of the deduction of the tax by one of the advertiser namely Wali Oil Mills Ltd., wherein, advance tax under Section 153(i)(b) has been deducted while making payment to various TV Channels and at the same time advance tax under Section 233 of the Income Tax Ordinance, 2001 has been deducted while making payment to the advertising agencies. According to the learned Counsel, the department has drawn an incorrect inference that Advertising Agencies are agents of Plaintiffs and which burden has not been discharged by them in view of the given facts. Learned Counsel without prejudice has also referred to the amendment made in Section 233 in the year 2017, which even otherwise is curative in nature and supports the case of the Plaintiff. He has further contended that though Show Cause Notices have been issued to the Plaintiffs for alleged non-deduction of advance tax, however, neither the advertiser nor the advertising agency have been issued any such Show Cause Notices, nor for that matter, any reconciliation has been made to seek clarification regarding the tax already deducted by the advertiser. He has also referred to the Financial Statements and submits that the department has seriously erred in facts by picking up the figures under the head of Revenue, wherein, for accounting purposes, the Plaintiffs have shown gross revenue and thereafter deduction of agency commission and discount to arrive at the net income from advertisement business and on no occasion the alleged Agency Commission of the Advertising

Agency has been shown or claimed as an expense. In support he has relied upon the case reported as **1988 CLC 425** ***(Pakistan Insurance Corporation v. Messrs United Liner Agencies and another)*** , **1988 CLC 1381** ***(Messrs Mastersons through its Partner v. Messrs Ebrahim Enterprises and another)*** & **PLD 2004 SC 869** ***(Bolan Beverages (Pvt) Limited v. PEPSICO INC. and 4 others).***

6. On the other hand, Mr. Kafeel Ahmed Abbasi appearing for Department in Suit Nos.330/2017 and 358/2017 has raised a preliminary objection as to maintainability of Suit in view of the Judgment reported as **2017 PTD 2123** ***(The Collector, Model Customs Collectorate and 2 others v. Messrs Naveena Industries Ltd. And others)***. He has further contended that Show Cause Notices have been issued competently under Section 122(5)(A) of the Ordinance, and there is no illegality to that effect. Per learned Counsel, the Judgment of the Hon'ble Supreme Court in the case of ***PTV (Supra)*** is in favour of the department, whereas, this is not a case of applicability of Section 153 of the Ordinance but is covered more specifically under Section 233(2) of the Ordinance 2001. Per learned Counsel Section 233(2) provides that if the Agent retains commission or brokerage from any amount remitted by to him the Principal, he shall be deemed to have been paid the commission or brokerage by the Principal, and the Principal shall collect advance tax from the agent; and in view of such position the Plaintiff was required to deduct tax which they have admittedly not done so; hence the entire amount of commission claimed as an expense is to be disallowed and added back in the income pursuant to Section 21(c) of the Ordinance. As to the contention of the plaintiff's case that such commission has not been shown and claimed as an expense, learned Counsel

contended that if that is the situation, then department has no case. In view of such position, he has prayed for dismissal of the Suit as well as pending applications.

7. While exercising the right of rebuttal both learned Counsel for the plaintiffs have contended that insofar as the judgment of learned Division Bench of this Court regarding maintainability of a Civil Suit before this Court in the case of ***The Collector, Model Customs Collectorate (Supra)***, is concerned, the same is suspended by the Hon'ble Supreme Court vide order dated 14.9.2017, and the matter is now finally reserved for judgment, hence, the same is not applicable at this stage of the proceedings. They have further submitted that admittedly as per the Financial Statements of the Plaintiffs the Agency Commission in issue was never claimed as an expense, and the department has seriously erred in treating the same as an expense.

8. I have heard all the learned Counsel for the parties and perused the record. Before deciding the merits of the case, I would like to observe that these cases have been assigned to this Bench pursuant to directions of the Hon'ble Chief Justice on a Letter dated 06.04.2018, issued by the Registrar of the Hon'ble Supreme Court, wherein, on the complaint of Federal Board of Revenue, directions were issued for expeditious disposal of the cases so mentioned in the said letter. Immediately thereafter, matter was taken up for hearing by this Bench but time and again the department failed to assist properly and on various dates none appeared on their behalf, whereas, on 30.05.2018, matter was fixed by the Court with a fixed time when none was in attendance on behalf of the department and finally once again notices were issued and on 01.06.2018 when this matter was finally heard none appeared on behalf of the department in one of

the Suit bearing No.359/2017. On the one hand, the department approaches the Hon'ble Supreme Court with a complaint regarding grant of stay and delay in final disposal of matter, and on the other, the state of affairs is that they even choose not to defend the case. In fact once directions were issued for attendance of some responsible officer, not below the rank of Deputy/Additional Commissioner LTU but no assistance has been provided while hearing these matters. Such conduct on the part of the department is not to be appreciated but must be deprecated.

9. To have a better understanding of the issue in hand, and for ease of reference, it would be advantageous to refer Section 233 and 21(c) of the Ordinance 2001, which at the relevant time read as under:-

> ***[233. Brokerage and commission.*** *— (1) Where any payment on account of brokerage or commission is made by the Federal Government, a Provincial Government, a[1] [Local Government], a company or an association of persons constituted by, or under any law (hereinafter called the "principal"‖) to a[2] [ ] person (hereinafter called the "agent"‖), the principal shall deduct advance tax at the rate specified in [3][Division II of] Part IV of the First Schedule from such payment.*
> *(2) If the agent retains Commission or brokerage from any amount remitted by him to the principal, he shall be deemed to have been paid the commission or brokerage by the principal and the principal shall collect advance tax from the agent."*

> ***"21. Deductions not allowed.***— *Except as otherwise provided in this Ordinance, no deduction shall be allowed in computing the income of a person under the head "Income from Business" for —*
> *(a) ……..*
> *(b) …….*
> *(c) any salary, rent, brokerage or commission, profit on debt, payment to non-resident, payment for services or fee paid by the person from which the person is required to deduct tax under Division III of Part V of Chapter X or section 233 of chapter XII, [4][unless] the person has [paid or] deducted and paid the tax as required by Division IV of Part V of Chapter X."*

10. The department's case precisely through impugned Show Cause Notices is to the effect that the Plaintiffs in their audited accounts have claimed expenses under the head Agency

Commission, which is liable to withholding tax under Section 233(2) of the Income Tax Ordinance, 2001, whereas, the withholding statements filed under Section 165 (ibid) for the tax year in question, do not reflect that any withholding tax has been deducted by them under Section 233 of the Ordinance on such agency commission, and therefore failure to do so leads the expenses not allowable under Section 21(c) of the Income Tax Ordinance, 2001. However, on perusal of the financial statements of the plaintiffs on which reliance has been placed by the department, it appears that such factual assertion is totally misconceived. The Plaintiffs in their financial statements on the Revenue side have shown their advertisement revenue and for ease of reference, it would be advantageous to refer to such treatment in their financial statements, which reads as under:-

Suit No.330/2017

		2014	**2013**
19.	REVENUE – net	Rupees	
	Advertisement revenue	3,873,281.067	3,265,001,779
	Less: Sale tax	518,409,473	439,831,524
	Agency commission	487,900,242	412,264,288
	Discount to customers	238,727, 247	208,650,205
		1,245,036,962	1,060,745,017
		2,628,244,105	2,204,255,762

Suit No.358/2017

			2014	**2013**
23.	REVENUE	*Note*	*(Rupees in '000)*	
	Advertisement revenue		8,529,942	7,894,520
	Less: Sale tax on advertisement		1,172,175	1,058,237
	Agency commission		1,103,259	989,083
	Discount		376,687	399,959
	Sales return and allowances		140,522	36,914
			2,792,643	2,484,193
			5,737,299	5,410,327
			252,717	173,025
			5,990,016	5,583,352

Perusal of the aforesaid portion of the respective financial statements reflect that nowhere the agency commission as referred to by the department in their Show Cause Notices has been claimed as an expense. In fact it is only an accounting treatment which has been given in this portion of the financial statements and the same has been done to arrive at net revenue under this head by first mentioning the total advertisement revenue and thereafter deducting Sales Tax on advertisement, agency commission, discounts and as well as returns and allowances. Nowhere this has been treated in any manner as an expense falling within the definition of Section 21(c) of the 2001 Ordinance, so as to make them liable for deduction of advance tax, and failing to do so, resultantly, to be added to the income as a whole. This has got nothing to do with expenses claimed for arriving at net income by the Plaintiffs. Section 21(c) would only apply in respect of expenses being claimed, including any salary, rent, brokerage or commission, profit and debt, payment to non-resident, payment for services or fee paid by the person from which the person is required to deduct tax. In fact the brokerage or commission as stated in the said section is altogether in a different perspective, like the commission or brokerage of Distributor, or for any other service related matter which is part of the cost of doing business and is being claimed as an expense. Therefore, on a plain reading of the financial statements as above it appears that in this the department has seriously erred on facts in initiating the exercise of issuance of Show Cause Notices. It is surprising as well as astonishing for this Court to note that an officer of Inland Revenue could commit such a mistake in appreciating a Financial Statement, which otherwise, is

apparently their expertise, as well as mandate under law. However, in this matter, non-application of mind is evident on the face of the proceedings, as at no stage the plaintiffs have claimed the purported Agency Commission of the Advertising Agency as an expense in their Financial Statements.

11. Insofar as the applicability of Section 233(2) of the Income Tax Ordinance is concerned, the same provides that if the agent retains commission or brokerage from any amount remitted by him to the Principal, he shall be deemed to have been paid the commission or brokerage by the Principal and the Principal shall collect advance tax from the agent. Though apparently this provision imposes a liability on the plaintiffs but is only applicable in a situation, wherein, the advertiser/customer of the Plaintiffs first pays the entire 100% of the amount directly to the advertising agency who, thereafter retains or deduct its 15% commission from the said amount and then remits the balance 85% to the Plaintiffs. However, in view of the Circular No.29/1999 dated 16.11.1999 and the Clarification Letter dated 02.02.2009, this is not in practice, whereas, the Circulars in question have not been denied by the Department, therefore, in the given facts, there is no question of applicability of Subsection (2) of Section 233 of the Income Tax Ordinance to hold that the Plaintiffs were required to deduct advance tax, which they have not done so, and therefore, they are liable for such non deduction. The mechanism of making payment of this transaction has been provided by the FBR itself and such Circular of the FBR is binding upon the department in view of the Provisions of Section 214 of the Income Tax Ordinance, 2001. A learned Division Bench of this Court in the case reported as ***Premier Mercantile Services (Private)***

Limited v Commissioner of Income Tax (**2007 PTD 2521**) has been pleased to hold as under;

> We would also like to point out that though C.B.R. does not figure in the hierarchy of the forums whose interpretation or explanation is binding, but, if a law has been correctly interpreted by C.B.R., it cannot be rejected for this reason only. Even .otherwise, as far as the respondents are concerned they are bound under section 214 of the Income Tax Ordinance, 2001 to follow the directions of the Central Board of Revenue although the directions of the C.B.R are not binding on the Appellate Authorities.

Similarly in the case reported as ***Pirani Engineering v Federal Board of Revenue*** (**2009 PTD 809**), while following the aforesaid dicta, it has been observed that;

> 20. We may at this stage also observe that although there can be no cavil to the proposition as held by the Honourable Supreme Court in the case of Central Insurance Co. quoted supra that the Central Board of Revenue or its functionaries do not figure in the hierarchy of the forums which have been entrusted with the powers for interpretation of statutes, therefore, such interpretation is not binding. However, if correct interpretation is given by Central Board of Revenue or its functionaries, such interpretation cannot be rejected merely for the above reason. The underlined principle has already been upheld by us in the judgment of Messrs Premier Mercantile Services (Pvt.) Ltd. v. Commissioner of Income Tax, Karachi (2007 PTD 2521).

In this matter, even otherwise this is not the case of department that this Circular is not valid or not in field or for that matter is not binding on them. In view of such position, since FBR has already prescribed a manner in which the payments are to be made in this case, even otherwise, no occasion arises for plaintiffs to deduct advance tax as contended on behalf of the department under Section 233 of the Ordinance, 2001.

12. In the Show Cause Notices in Suit Nos. 358 & 359 of 2017, the officer has also placed reliance on the decision given by the Appellate Tribunal Inland Revenue in the case of *PTV Islamabad V. CIR LU Islamabad* in ITA No.923 to 928/IB/2011 dated

09.03.2015, whereas, the said decision of Appellate Tribunal has in fact been overruled by the Hon'ble Supreme Court in the case of reported as **2017 SCMR 1136** ***(Messrs Pakistan Television Corporation Limited v. Commissioner Inland Revenue (Legal) LTU, Islamabad and others).*** The learned Counsel for department made an effort to argue that in fact the Supreme Court judgment in that case is in fact in favor and reliance was placed on Para 7 thereof which reads as under;

> 7. We now advert to the applicability of section 233 of the Ordinance. According to subsection (2) thereof, if an agent retains the commission from any amount he remits to the principal, the former shall be deemed to have been paid the commission by the latter, who shall collect advance tax from the former. The relationship of principal and agent is a sine qua non for the purposes of section 233(2) of the Ordinance. Controverting the department's plea in this regard, learned counsel for the petitioner submitted that as per the agreement between PTV and WAPDA, no relationship of principal and agent existed between them as the latter was only providing services to the petitioner. Suffice it to say that the agreement does not indicate a relationship of agency between PTV and WAPDA, rather the wording employed therein suggests that it was a contract for the provision of services for which the latter was entitled to a 'service fee'. As such, no relationship of principal and agent existed between PTV and WAPDA requiring the former to collect tax from the latter in terms of section 233 supra. In this context, the judgment reported as The Ramkola Sugar Mills Co., Ltd v. The Commissioner of Income-Tax, Punjab and North-West Frontier Province Lahore (PLD 1955 Federal Court 418) referred to by the learned counsel for the respondent examined whether dividend income could be said to have been received by the assessee in British India within the meaning of section 4(1) read with section 14(2)(c) of the Income Tax Act, 1922 and is therefore distinguishable.

Perusal of the aforesaid Para reveals that it is only to the extent of applicability of Section 233 ibid on such transaction as specified in sub-section (2); however, as stated earlier, the plaintiffs case is governed by the Circular and its clarification issued by FBR, and in view of such position it is abundantly clear that no payment is either being made to the Advertising Agency (in fact the relationship of such nature is also disputed, but is not relevant for the present purposes), nor by the Principal (Plaintiffs), and it is the Advertiser / Customer who is making the payment to both of

them and is deducting the tax accordingly. Hence the question of applicability of Section 233 ibid, is not relevant for the present case. In fact even otherwise, this Court has not been assisted nor is it the case of the department that no such tax is being deducted by the Advertiser.

Notwithstanding the above, it is a matter of record that the department in their show cause notices (at least in 2) has relied upon the judgment of the Appellant Tribunal Inland Revenue, in ***PTV's*** case, and therefore, I would also like to dilate upon the same. Admittedly the said judgment of the Tribunal has been reversed by the Hon'ble Supreme Court and therefore, there cannot be any exception to it. Learned Counsel for the department also made an effort (feeble effort so to say) that their case is not entirely based on the said judgment of the Tribunal and therefore, it is of no consequence even if it has been reversed by the Hon'ble Supreme Court. However, this appears to be an afterthought. It has been relied upon in the show cause notice and is a part of it; hence, after its reversal by the Apex Court, the stance cannot be altered or changed. In this judgment of ***PTV,*** the issue was that WAPDA was collecting TV Licence Fee from consumers on behalf of PTV and firstly, it was an admitted position that PTV had claimed the fee paid to WAPDA as an expense, whereas, in this case the plaintiffs have not claimed the same as an expense. Nonetheless, even then the Hon'ble Supreme Court came to the conclusion, that PTV was entitled to claim such payment as an expense, notwithstanding the fact that PTV had not deducted or collected any advance tax on such payment made to or retained by WAPDA. A conclusive finding has been reached and law has been settled in this case that since no payment was made by PTV, therefore, the provision of Section

153(1)(b) of the Ordinance did not apply. Secondly, as to section 233 ibid, again it has been conclusively held that no relationship of agent and principal was involved; therefore, even section 233(2) is also not attracted. The observation and conclusion in Para 9 of the said judgment is relevant and reads as under;

> 9. The conclusion of the above discussion is that since PTV was not liable to deduct tax under section 153(1)(b) of the Ordinance as it did not make any payments to WAPDA nor was the former required to collect advance tax under section 233(2) thereof due to the absence of the relationship of agency with the latter, thus PTV did not fall within the garb of the exception of section 21(c) supra and was entitled to claim deduction of service fee from its income as expenditure. The findings of all the forums below in this respect are liable to be set aside.

The Hon'ble Supreme Court also examined the case from another angle; and that is, if ultimately, the tax liability has been satisfied, in that it has either been paid by PTV or for that matter by WAPDA, then again no case is made out by the department to disallow such expense in terms of Section 21(c) of the Ordinance. For the sake of repetition it may be observed that here in this case it is not established that any expense was claimed as contended, disentitling such expense from deduction for not withholding or depositing advance tax. On the contrary, it has been brought on record, without prejudice to other contentions, that the tax liability, if any, already stands discharged, by the Advertiser, while making payments to the plaintiffs and agency, by deducting advance tax in terms of sections 153 and 233 respectively. Therefore, this Court is of the view that the observations of the Hon'ble Supreme Court and enunciation of law in the case of PTV, is fully attracted, though on different facts. Hence, on this score as well the plaintiffs have made out a case.

13. Insofar as, the objection regarding maintainability of Suits raised by the learned Counsel for the Department is concerned, I

may observe that as a matter of fact, Judgment reported in the case of ***The Collector, Model Customs Collectorate (Supra)***, it was impugned by various parties before the Hon'ble Supreme Court and vide Order dated 14.09.2017, passed in Civil Appeals No.1171/2017 and other connected matters, the operation of the said Judgment has been suspended and still remains suspended, whereas, the matter is now reserved for judgment by the Hon'ble Supreme Court finally. In such situation it would not be appropriate to give any conclusive finding as to the maintainability of the Suit, whereas, even otherwise, presently, it is only the applications under Order 39 Rule 1&2 CPC, which have been fixed before the Court. Neither issues have been settled nor to that effect has any application been moved by the department for settling issues without leading of evidence, or for that matter for rejection of plaint under Order VII Rule 11 CPC. Therefore, I am of the view that for the present purposes this Court must show restraint in giving any finding as to maintainability of the Suit as the matter now ultimately and finally is to be decided by the Hon'ble Supreme Court.

14. In view of hereinabove facts and circumstances of this case, I am of the view that all Plaintiffs have made out a prima facie case for grant of injunctive relief, whereas, balance of convenience also lies in their favour and irreparable loss would be caused, if the relief sought is refused. Accordingly, all these three applications bearing **CMA Nos.1828 of 2017 (Suit No.330/2017), 2030/2017 (Suit No.358/2017) and 2032/2017 (Suit No.359/2017)** are allowed by confirming ad-interim orders passed in these matters and the Defendants/department is restrained from passing any final orders in respect of the above portions of the Show Cause Notices till final adjudication of these Suits.

15. The Additional Registrar (OS) to act accordingly pursuant to office note dated 7.4.2018, whereby, this matter was assigned to this Bench.

16. All listed injunction applications are allowed as above.

Dated: 20.06.2018

J U D G E

Ayaz P.S.