

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

**CP D 3394 of 2018**  
**CP D 3520 of 2018**

<b>Date</b>	<b>Order with signature of Judge</b>
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Before: **Mohammad Junaid Ghaffar** and **Agha Faisal, JJ.**

**03.11.2020**

Mr. Umer Akhund, Advocate for the petitioners.  
Mr. Kafeel Ahmed Abbasi, Deputy Attorney General.  
Mr. Muhammad Aqeel Qureshi, Advocate for the respondent department.  
Mr. Abdullah, Advocate for K-Electric.

***Mohammad Junaid Ghaffar, J.*** Through these petitions the petitioners have prayed and seek a declaration that the business activity of “rerolling” stands excluded from the ambit of Section 235B of the Income Tax Ordinance, 2001 and Clause 9A of the Second Schedule Part IV of the Ordinance; hence is not liable for payment of any advance tax under section 235B ibid. Learned counsel for the petitioners submits that the petitioners are exclusively involved in rerolling business, whereas in terms of section 235B tax was to be deducted by respondent No.3/K-Electric; however, after 01.07.2017, the petitioners pursuant to the amendment are not liable to pay any advance tax and, therefore, approached respondent 2 for issuance of exemption certificates, which has been denied; hence, this petition. According to him, the impugned order has been passed without appreciating the relevant provisions and the amendment so carried out; benefit of which applies to the case of the petitioners. In view of such position he has prayed that these petitions be allowed.

2. Learned counsel for the department has opposed the petitions on the ground that these are not maintainable, whereas

the petitioners are otherwise not entitled for any exemption certificates.

3. We have heard both the learned counsel and perused the record. At the very outset, we had confronted the learned counsel for the petitioners as to why first the remedy available under Section 122B of the Ordinance, 2001 was not availed through a revision before the Chief Commissioner and to that he could not satisfactorily respond. In our view, such conduct on the part of the petitioners without any lawful justification and reasoning cannot be appreciated. Section 122B provides a remedy of revision in respect of the denial of an exemption certificate by the Commissioner and, therefore, the petitioners ought to have availed such remedy. Moreover, the very question on merits that whether the petitioners are engaged exclusively in rerolling activity and are not at the same time not involved in the business of re-melting or otherwise; is a pure question of fact which in our Constitutional jurisdiction cannot be decided.

In view of hereinabove facts and circumstances, these petitions appear to be misconceived and not maintainable and are therefore dismissed. The petitioners, if still aggrieved, may seek remedy before the department. Office is directed to place copy of this order in connected petition 3394 of 2018.

**J U D G E**

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Farooq PS\*