IN THE HIGH COURT OF SINDH AT KARACHI

Present:
Muhammad Iqbal Kalhoro, **J**.
Agha Faisal, **J**.

SSTRA 191 of 2018

Commissioner Inland Revenue, Zone-IV
vs.
Byco Petroleum Pakistan Limited

(And connected matters, particularized in the Schedule[1] hereto.)

For the Applicants	:	Mr. Ameer Bux Maitlo, Advocate Mr. Imran Ahmed Maitlo, Advocate Mr. Kafeel Ahmed Abbasi, Advocate
For the Respondents	:	Mr. Hyder Ali Khan, Advocate Mr. Sami ur Rehman, Advocate
Date/s of hearing	:	28.04.2022
Date of announcement	:	06.05.2022

JUDGMENT

Agha Faisal, **J**. The facts common to all references under scrutiny herein are that during the period when the circular debt crisis was at its pinnacle in Pakistan, precipitating a calamitous liquidity crunch, entities in the directly hit petroleum sector filed returns, along with payment of tax, slightly late[2] and consequently show-cause notices were issued thereto, seeking recovery of default surcharge and penalty, since the correct quantum of tax had admittedly been paid. The show-cause notices culminated in assessment orders, whereby the respondents were found liable for payment of default surcharge and penalty. In appeal, the Commissioner Appeals set aside the imposition, holding that there was no cause demonstrated for imposition of default surcharge and / or penalty. The said findings were also maintained by the learned Appellate Tribunal Inland Revenue. Aggrieved by the concurrent findings, i.e. that of the Commissioner Appeals and the Appellate Tribunal Inland Revenue, the applicant department has preferred these references.

[1] The Schedule hereto shall be read as an integral constituent hereof.
[2] Late by a few days in the least and a couple of weeks at most; per Applicants' counsel.

2. Per the learned counsel, the facts / orders rendered pertaining to the lead reference are representative of all the connected references, hence, the assessment order, Commissioner Appeals order and the order passed by the learned Appellate Tribunal Inland Revenue in the lead reference are reproduced herein in order to illustrate the *lis*.

Assessment Order

"13. The perusal of record clearly reveals that registered person has made default and failed to discharge tax liability within due date. The late payments of sales tax has been admitted and has been established from the CPR produced before the undersigned. The section 33(5) of Sales Tax clearly contains that "Any Person who fails to deposit the amount of tax due or any part thereof in the time or manner laid down under this Act or rules or orders made there under. Such person shall pay the penalty of ten thousand rupees or five percent of amount of tax involved, whichever is higher".
It is abundantly clear from the perusal of section 33(5) of sales tax Act, 1990 that for invoking penalty under 33 of Sales tax Act, 1990 mens rea is not required, rather failure to deposit the tax due or part in the time and manner is sufficient to penalize under the Section 33(5) of Sales tax Act, 1990.
14. Whereas, perusal of Section 34(1) of Sales Tax Act, 1990 which reveals that "Notwithstanding the provisions of section 11, if a registered person does not pay the tax due or part thereof, whether willfully or otherwise, in time or in the manner specified under this…."
Similarly, section 34 of Sales Tax Act, 1990 is also crystal clear that in case of failure to pay tax within due date whether willfully or otherwise shall pay default surcharge, hence, for recovery of default surcharge it is not mandatory that default should be willful, rather evidence of late payment is sufficient to invoke section 34 for recovery of default surcharge.
15. It is pertinent to discuss that nonpayment of tax in normal course of business is civil liability which can be rectified corrected by normal assessment and adjudication process whereby penal action under Section 33 and 34 of Sales tax Act, 1990 are invoked on the ground of failure to pay tax due or part which needs not any element of mens rea. Whereas, for the prosecution of any tax fraud or any criminal liability, prosecution has to establish the element of mens rea for any kind of punishment.
16. Now, after going through the all record, documentary evidences of payments, written reply of the registered person and arguments placed, it is abundantly proved that registered person has committed default and failed to deposit/pay the tax due within stipulated time period. Moreover, registered person also failed to produced any evidence of circular debt or non availability of funds which compelled him for making delay in tax payment.
17. In the light of above discussion it becomes clear that provisions of section 33 and 34 of sales tax Act, 1990 clearly distinguish between penalty and punishment, penalty is regarded as civil liability which does not require any involvement of mens rea merely evidence of delay in tax payment is sufficient to impose penalty under the Act.
18. In the light of above facts, discussion and evidences available before undersigned, I hereby order to impose and recover default surcharge under Section 34 of Sales Tax Act, 1990 to the tune of *Rs.1,190,014/-*. I also order to impose and recover penalty of Rs.5,000/- for late filing and penalty of Rs.24,500/- for late payment under Section 33(5) of Sales Tax Act, 1990."

Commissioner Appeals Order

"I have perused the impugned order of the Officer and also written arguments submitted by the learned counsel of the appellant and my findings are as under:
It is noted that the officer has leveled default surcharge and penalty on late payments of Sales Tax for the tax period September-2016. The AR explained that petroleum industry including appellant is facing liquidity problems due to circular debt issue. Therefore, like other oil companies, appellant has also suffered this national calamity, and delayed in making timely payment of Sales Tax dues. However, payment of principal amount of Sales Tax itself proves that there is no willful default, in payment of sales Tax, committed by the appellant. The AR has pointed out that initially CIR(Appeals-) in STA/52/LTU/2012, STA/63/LTU/2012 and STA/65/LTU/2012 dated 18.01.2013 under the similar circumstances had set-aside the levy of penalty and confirmed the default surcharge. These appeal Orders were followed by the predecessor in sales tax appeals STA/91/LTU/2013 & STA/92/LTU/2013 dated 27.08.2013 and STA/78/LTU/2013 dated 22.04.2014, when levy of penalty was deleted and default surcharge was confirmed. The AR continued to add that against levy of default surcharge, the appellant filed 2nd appeal before the learned ATIR against all the above referred orders-in-appeal. All the appeals filed on the issue of levy of default surcharge were decided the appellant's favour by the learned Appellate Tribunal vide their order STA Nos.31/KB, 32KB, 204/KB & 205/KB of 2013 and MA(A.G.)82/KB/2013 & MA(A.G.)101/KB/2013 and STA No.02/KB/2014 departmental appeals vide STA No.22/K/2013 & FED No.04/KB/2014. The learned Appellate Tribunal Inland Revenue has held as under:-
STA Nos.31/KB/2013
5. We have considered the arguments of both the sides and tend to agree with the AR in view of the fact that appellant operated under unique set of circumstances wherein the vicious circle of Circular Debts had so badly affected the liquidity position of the appellant that it was actually impossible to discharge the sales tax liability, precisely on timely basis. As per the auditors, the appellant company could not be qualified as a going concern. The circular debt scheme basically introduced by the Federal Government itself and payments to the appellant were directly under government scheme of things. The appellant was rendered helpless as they could not press government or its customer, PSO, for earlier payments of its entire legitimate dues. Under the circumstances which are very much distinguishable as compared to any other case, the appellant could not be expected to do the miracles or to perform and impossible act without setting its assets. The principal amount of sales tax itself was paid by resorting to bank borrowings.
We, therefore, conclude that the element of mens rea was totally absent. The appellant is a tax compliant which is conceded by the department. Therefore, we hereby delete the amount of default surcharge of Rs.105,754/-.
Vide STA Nos.32/KB, 33/KB & 205/KB of 2013 and STA No.02/KB/2014 AND departmental Appeals vide STA No.22/K/2013 & FED No.04/KB/2014
10. We have considered arguments of the learned representative of both the sides and have perused the available record of the case. We are of the view that due to peculiar circumstances mentioned by the A.R.

because of the fact that it was impossible for the appellant to discharge its liability precisely on timely basis, and the circumstances were beyond its control, hence the element of 'mens rea' was definitely missing and therefore no Default Surcharge could be levied. Hence, the default surcharge maintained by the CIR-Appeals is also deleted in respect of Appeals STA No.32/KB, 33/KB & 205/KB of 2013 and STA No.02/KB of 2014 related to the periods from July-2010 to June-2011.
The four appeals filed by the taxpayer as well as two cross appeals filed by the Department are disposed of as indicated above.
Vide STA No.204/KB/2013
13. After hearing both he representatives we lend to agree with the decision of the Tribunal that it would be unfair with the honest and compliant taxpayer who had discharged their principal sales tax liability, voluntarily, well before the announcement of the Amnesty Scheme not to avail the benefit of amnesty Scheme. Such taxpayers, like appellant are placed in a better position as compared to those who held the amounts of sales ax till the final opportunity.
In view of the above we agree with arguments of the AR and delete the default surcharge levied.

Most recently the learned Appellate Tribunal Inland Revenue, Karachi in the sales tax appeal No.332/KB/2015 again deleted default surcharge and penalty in appellant's case vide order dated 01.09.2015 by making following observations:
"We are in agreement that the position, the facts and the circumstances are same as were at the time of earlier orders passed by the ATIR in appellant's own case vide combined appellate order STA No.31/KB, 32/KB, 33/KB, 204/KB, 205/KB of 2013 and MA(A.G) 82/KB/2013 & MA(A.G)101/KB/2013 and STA No.02/KB/2014 and departmental appeals vide STA No.22/K/2013 & FED No.04/KB/2014 dated April 16, 2014. The relevant extracts of the concluding para of earlier order passed by ATIR in appellants own case is reproduced below:
"We have considered the arguments of both the sides and tend to agree with the learned AR in view of the fact that appellant operated under unique set of circumstances wherein the vicious circle of Circular Debts had so badly affected the liquidity position of the appellant that it was actually impossible to discharge the sales tax liability, precisely on timely basis. As per the auditors, the appellant company could not be qualified as a going concern. The circular debt scheme basically introduced by the Federal Government itself and payments to the appellant were directly under government scheme of things. The appellant was rendered helpless as they could not press government or circumstances which are very much distinguishable as compare to any other case, the could not be expected to do the miracles or to perform an impossible act without selling its assets. The principal amount of sales tax itself was paid by resorting to bank borrowings.
We, therefore, conclude that the element of mens rea was total absent. The appellant is a tax compliant which is conceded by the department. Therefore, we hereby delete the amount of default surcharge…"
We have considered the facts and merit of the case and are in agreement with earlier order passed in the appellant's own case and conclude that because of the fact that the late payment of tax was not malafide or willful act of omission or otherwise, rather it was not possible for the appellant to pay sales tax on time, and the circumstances were beyond its control, hence, the element of 'mens rea' was definitely missing and therefore the CIR-Appeals has rightly deleted the default surcharge and penalty, hence, the action of the CIR-Appeals is maintained in case of appeals filed by the Tax Department.

It is observed that following the above orders of the learned Tribunal as binding precedent, my predecessor has also decided the appeals in favour of the appellant and against the department.

In order to ascertain the financial position of the appellant during the quarter July-September-2016, the quarterly financial result of the quarter ending on 30.09.2016 were examined and it was found that the appellant still continue to suffer from the financial crunch and the auditors have shown doubts on its "Going Concern Assumption" in the following lines:
"As at 30 September 2016, the Company's accumulated losses amounted to Rs.7,500.207 million (30 June 2016 Rs.7,944.149 million). Moreover, current liabilities of the Company exceeded its current assets by Rs.17,646.883 million.
These conditions indicate existence of material uncertainty which may cast significant doubt about the Company's ability to continue as going concern, therefore, it may be unable to realize its assets and discharge its liabilities in the normal course of business. These unconsolidated condensed interim financial statements have been prepared using the going concern assumption as the management is confident that all these conditions are temporary, and would reverse in foreseeable future due to the reasons given below:"

Based upon above qualifying notes of the auditor of the appellant it is noted that the ratio settled by the learned ATIR in appellant's own case does hold ground during the impugned tax period.

In view of above certification by the auditor, appellate history of the appellant at first appellate stage and the decisions of the learned Tribunal cited supra which are binding on me, the default surcharge and penalty levied for late deposition of due tax in the impugned order are hereby deleted as there is no change in the facts & circumstances in the appellant's case which are identical to the periods quoted supra..."

Appellate Tribunal Inland Revenue Order

"9. We have heard the learned representative of both the parties and also carefully gone through the material available on record as well as presented at the time of hearing before us. We have found that the learned CIR (A) has given his findings through placing reliance on the judgments of higher appellate for a as well as this tribunal. We have further observed that the late filing of returns and Sales Tax by the Register Person is not deliberate and intentional as is evident from the financial position placed before us during the hearing and reproduced in pre peras. It is a trite law that default surcharge and penalty can be imposed only where it appears that the act of the taxpayer was intentional, which attract/expressing an element or mens rea. Moreover, it is not the purpose of the law to penalize the taxpayer for differences in opinion. We have also given consideration to the case laws relied on by the learned AR to substantiate his arguments. The relevant extract from the said judgments are reproduced herein below:

2002 PTD 300

"*Since the controversy between the department and the appellants relates to interpretation of different legal provisions the imposition of additional tax and penalty has no justification and the same are accordingly waived."*

10. PTCL 1995 CL 415, wherein the Lahore High Court has observed in case of M/s. Lone China (Pvt) Ltd versus Additional Secretary to the Government of Pakistan Ministry of Finance, CBR, Customs House, Karachi that the petitioner did not act with malafide intention to evade tax, hence the imposition of penalty and additional tax and surcharge is not justified. It was held by the High Court that:
"*After examining the provision of both the Act, I am however fully persuaded to hold that as regards adjustment made by the petitioner or input tax paid on Refractory Materials, Plate Setter and Filter Cloth from November 1990 to June 1991, the petitioner did not act malafidely with the intention to evade the tax.*

It appears that due to change in the physiology used in section 7(1) of the Sales Tax Act, 1990 he might have entertained an expression that the principles embodied in the provisions of Sales Tax Act, 1951 regarding this subject had undergone a change therefore, the imposition of penalty of an additional tax and surcharge qua the said period is not justified."

11. The Hon'ble Supreme Court of Pakistan in the case of ICI Pakistan Limited reported as 2006 PTD 1132, re-affirmed the aforesaid principles with regard to imposition of default surcharge and penalty. After examining the provisions of section 34 of the Sales Tax Act, 1990 (as it stood at the relevant time) and relying on the principles enunciated by the court in certain other cases, it was categorically held by the court that with reference to imposition of default surcharge, each and every case has to be decided on its merits as to whether the evasion or non-payment of tax was willful and malafide, decision of which would depend upon the question of recovery of default surcharge. It was further observed by the court that it there is no material available on record to corroborate that the short payment of tax was malafide or willful act of omission, the default surcharge could not be levied.

12. It is pertinent to mention here that on the issue in hand, the taxpayer has a strong history of acceptance at the level of this Tribunal as is evident from a number of judgments placed before us, the ratio settled by this Tribunal in one of taxpayer's case is reproduced hereunder:-
Orders-in-Appeal Nos.STA/52/LTU/2012, STA/63/LTU/2012 and STA/65/LTU/2012 dated 18.01.2013, set aside the penalty, in the company's case, by holding that
"The auditor of the company has qualified very existence of company and expressed his doubts as a "going concern" entity. The obviously means that financial position of the company is fairly weak and it may shut down its business operation any time in future. The taxpayer company importer and sells its finished product to PSO only. This means its entire sale/business turnover is dependent on one client and the resultant output tax affairs. The taxpayer has submitted copy of an order u/s 11(2), 34, 36(1) dated 22.01.2011, in the case of PSO wherein the instant taxpayer informed the department in respect of default also pushing the instant taxpayer into default. The said order refers to "whistle blowing" performed by the instant taxpayer.
On the contrary, the taxpayer has a compliant history at his credit and the department has already recovered the principal volume of tax from him in installment. The principal customer, i.e. PSO, who is already suffering from circular debt issue. I do not find any malafide or willfulness leading to belated payment of tax. Taxpayer, intended to make payment but prevented by the circumstances to do so. The intensions compelled to him to report the non-compliance of M/s. P.S.O. reliance is placed on the following cases law in order to analyze "intent".
i) Pakistan Services Ltd. vs/ Collector Central Excise and Sales Tax, Lahore, (PTCL. 1997-CL.197 CESSTAT-Lahore).
ii) Nestle Milk Pack Ltd. v/s Addl. Collector Adjudication, Multan (PTCL. 2001-CL.627 CESSTAT-Lahore)
iii) 2008 PTD 1964 (Trib.)
iv) *In the context of above factual and legal position the levy of penalty amounting to Rs…….. is set aside".*
13. The stance taken by the taxpayer is further strengthen by two recent judgments, in cases of the company vide consolidated Orders in departmental appeals STA No.184/KB/2014, 498/KB/2015, 499/KB/2015 & 39/KB/2016 dated 23.02.2016, and its sister concern i.e. Byco Oil Pakistan Ltd., vide consolidated Orders in departmental appeals STA No.500/KB/2015, 501/KB/2015, 534/KB/2015 & 38/KB/2016 dated 23.02.2016, the Tribunal has maintained the orders of the Commissioner (A) on the issue of deletion of Default Surcharge and Penalty.
14. As the facts and circumstances are similar in the present case also, therefore, the deletion of Default Surcharge and Penalty made by the Commissioner (Appeals) is maintained and the appeals filed by the department are rejected."

3. Per applicants' learned counsel[3] the imposition of default surcharge and penalty was merited as the same amounted to a civil liability[4], hence, impervious to the admitted absence of *mens rea*; it was not an offence per section 53 of the Pakistan Penal Code 1860; and finally that the pertinent impositions were on account of a strict liability offence[5], therefore, the absence of *mens rea* was immaterial.

The respondent/s' learned counsel[6] supported the concurrent orders, being that of the Collector Appeals and the learned Appellate Tribunal Inland Revenue, and expounded that no default surcharge / penalty could be imposed in the manifest absence of demonstrable intent to not pay tax and / or a *mala fide* refusal to pay tax. It was concluded that the orders under scrutiny merited no interference in the reference jurisdiction.

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[3] Arguments were articulated by Mr. Ameer Bux Maitlo Advocate and adopted by Mar. Kafeel Ahmed Abbasi Advocate.
[4] *Pakistan & Others vs. Hardcastle Waud & Others* reported as *PLD 1967 SC 1* was cited, however, the said judgment, in context of the Sea Customs Act 1878, is distinguishable in the present facts and circumstances *inter alia* as the element of *mens rea* was found present (page 15 of the judgment).
[5] Definitions of strict liability, per dictionary and case law, were cited, however, the said argument is in itself contradictory to the assertion that the impositions are not offences at all and amount to mere civil liability.
[6] Mr. Hyder Ali Khan Advocate.

4. Heard and perused. Since the facts and circumstances of the references were represented to be common *inter se*, they were heard and reserved conjunctively. This Court shall endeavor to determine all the references under scrutiny herein vide this common judgment.

5. While various questions of law were proposed by the applicants from time to time, it is our observation that the same were repetitive, argumentative and did not clinch the real controversy sought to be agitated. In view hereof, it is considered appropriate, with respect, to abridge and reformulate[7] the questions of law in order to efficaciously adjudicate the *lis* before us, therefore, we do hereby reformulate and frame the following question of law to be deliberated and determined herein:

> *Whether, in the present facts and circumstances, the levy of default surcharge and penalty upon the respondents was warranted per the law?*

6. The scope of reference jurisdiction[8] is primarily confined to legal questions emanating from the judgment impugned[9] and it is settled law that the learned Appellate Tribunal is the final arbiter of facts[10].

7. In the circumstances before us, the assessment orders attributed no *mens rea* to the respondents and on the contrary stipulated that none was required to impose default surcharge and / or penalty.

The preponderance of binding precedent[11] demonstrates that the existence of *mens rea* is essential for imposition of default surcharge and / or penalty. The principle has been extended to stipulate that even non-payment of tax due to misinterpretation of law in good faith does not attract a penalty[12].

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[7] *A. P. Moller Maersk & Others vs. Commissioner Inland Revenue & Others* reported as *2020 PTD 1614*; *Commissioner (Legal) Inland Revenue vs. E.N.I. Pakistan (M) Limited, Karachi* reported as *2011 PTD 476*; *Commissioner Inland Revenue, Zone-II, Karachi vs. Kassim Textile Mills (Private) Limited, Karachi* reported as *2013 PTD 1420*.

[8] *Squibb Pakistan (Pvt) Ltd. V. Commissioner* reported as *2017 PTD 1303; F.M.Y. Industries vs. Deputy Commissioner* reported as *2014 SCMR 907; Fawad Ahmad Mukhtar vs. The Commissioner Inland Revenue (Zone-II) Regional Tax Office Civil Appeals 1521-1526 of 2018*; *Fatima Fertilizer Company Ltd vs. Commissioner –II* reported as *2021 PTD 484;*

[9] In the present context it would be order of the learned Appellate Tribunal Inland Revenue.

[10] *FMY Industries Ltd vs. Deputy Commissioner Income Tax* reported as *2014 SCMR 907*; *Commissioner of Income Tax vs. Matrix Press* reported as *2016 PTD 97*; *Commissioner Inland Revenue vs. Al-Hamad International* reported as *2017 PTD 2212*; *Commissioner Inland Revenue vs. Triple Tree Associates* reported as *2017 PTD 662;*

[11] *D.G. Khan Cement vs. Federation of Pakistan* reported as *2004 PTD 1179; Deputy Collector Central Excide vs ICI Pakistan* reported as *42006 SCMR 626; Commissioner of Income Tax vs. Habib Bank* reported as *2007 PTD 901; Additional Collector of Customs vs. M Hussain* reported as *2016 PTD 2748; CIR vs. Tianshi International Pakistan* reported as *2018 PTD 900; Fatima Fertilizer Company Ltd vs. Commissioner -II* reported as *2021 PTD 484;* China Hub Power Generation Company vs. Pakistan in CP.D 3532 of 2020; *Sindh Petroleum & CNG Dealers Association vs. FOP* reported as *2021 PTD 713; Aameer Mustaaly Karachiwala vs. Deputy Commissioner* reported as *2021 PTD 335;* IMS Health Pakistan Pvt Ltd vs. Commissioner II SSTRA No. 02 of 2017; Gharibwal Cement Ltd vs. Income Tax Appellate Tribunal (2005) 91 Tax 250; *Coca Cola Beverages vs Customs, Excise and Sales Tax* reported as *2017 PTD 2380; Additional Commissioner of Income Tax vs. Narayandas Ramkishan* reported as *1994 PTD 199.*

[12] Non-payment of tax due to misinterpretation of law in good faith does not attract penalty
Collector of Customs vs. Shaikh Shakeel Ahmed reported as *2011 PTD 495*; *United Refrigeration Industries vs. Director DI&I, FBR* reported as *2021 PTD 1430;*

A Division Bench of this Court has maintained in *China Power*[13] that default surcharge ought not to be imposed in a perfunctory manner and may only be warranted upon proper adjudication as to willful default[14] *and* the presence of *mens rea*. It is imperative to mention that *China Power* has recently been maintained by the august Supreme Court[15].

8. The Commissioner Appeals found that the delay in payment of tax, albeit marginal, was ostensibly on account of the prevalent crisis of circular debt in the petroleum industry, hence, there was no occasion of any willful default. The Commissioner remained of the view that in any event there was no attribution of culpable *mens rea* with respect to the respondents in the assessment orders and that none was even otherwise warranted. The learned Appellate Tribunal Inland Revenue found no reason to differ with the Commissioner Appeals and upheld the findings. Therefore, it is *prima facie* manifest that the final arbiter of facts in this adjudicatory hierarchy has found no element of willful default and *mens rea*, hence, did not sanction the imposition of default surcharge and penalty.

9. Even though *China Power* pertained to income tax, a Division Bench of this Court held in *Tianshi International*[16] that section 34 of the Sales Tax Act 1990 was materially not different in scope from sections 161 / 205 of the Income Tax Ordinance 2001, relating to default and willful default and that the levy of default surcharge on a hypothetical basis, and without establishing willful default on the part of taxpayer, was illegal and a nullity in the eyes of law[17]. It is imperative to denote that the decision in *Tianshi International* was rendered in 2017, therefore, much after the amendment in section 34 of the Sales Tax Act 1990 and the Court observed that the developed principles of law remained indistinguishable[18].

Even though the honorable Islamabad High Court has been demonstrated to find otherwise[19], we remain bound by the enunciation of law expounded in *Tianshi International* in view of the *Multiline*[20] principles.

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[13] *China Power Hub Generation Company (Private) Limited vs. Pakistan & Others (CP D 3532 of 2020)*; judgment dated 11.02.2021.
[14] *R.C.D. Ball Bearing Limited vs. Sindh Employees Social Security Institution, Karachi* reported as *PLD 1991 SC 308*; *Masood Textile Mills vs. Ihsan ul Haq, CIT, Faisalabad* reported as *2003 PTD 2653*
[15] *CIR-III vs. China Power Hub Generation Company (Private) Limited vs. Pakistan & Others (CP 546-K of 2021)*; order dated 10.02.2022.
[16] *Tianshi International Pakistan vs. CIR* reported as *2018 PTD 900*.
[17] Reliance was placed on 109 Tax 385 (ATIR); 1992 PTD 342 (SHC) and 2006 SCMR 626 (SC).
[18] Paragraph 7 of the judgment.
[19] *Attock Refinery Limited vs. Collector Sales Tax* reported as *2021 PTD 1680*.
[20] *Multiline Associates vs. Ardeshir Cowasjee* reported as *1995 SCMR 362.*

10. The applicants' counsel suggested that default surcharge and penalties were civil liabilities (and not relatable to offences), however, then argued that they were consequent upon strict liability offences. *Prima facie* the submissions appeared to be rather incongruent *inter se*. It is settled law that penalties under fiscal laws are quasi criminal in nature[21] and warrant imposition in the presence of culpable intent. It is pertinent to reiterate that the assessment orders themselves attribute no culpable intent to the respondents.

11. The Commissioner Appeals observed that the petroleum industry[22] was severely hit by the *national calamity* of circular debt leading to the marginal delays under scrutiny, however, the payment of the correct quantum of tax demonstrated that there was no willful default. Reference was made to binding *pari materia* decisions holding that since the vicious cycle of circular debt was linked to the Federal Government itself, the respondents could not be encumbered with a burden arising as a direct corollary thereof. The learned Appellate Tribunal Inland Revenue agreed with the foregoing and maintained that there existed no cause to warrant the imposition of default surcharge and penalty upon the respondents and particularized that identical treatment had been given to all similarly placed entities in the petroleum sector.

12. The statutory dispute resolution hierarchy recognized that the calamitous liquidity crunch originated with the Federal Government and penal consequences could not be imposed upon entities unable to meet their tax obligations in a timely manner purely on account thereof. These findings of fact are pertinent hereto and with respect thereof the learned Appellate Tribunal is the final arbiter. Nothing exceptionable has been demonstrated before us to warrant any interference in such regard even otherwise.

13. In view of the reasoning and rationale contained herein, duly bound by the enunciation of law expounded by the earlier Division Bench judgments of this Court in *Tianshi International*[23] read with *China Power*[24] per the *Multiline*[25] principles, the question reframed for determination by this Court is answered in the negative, hence, in favor of the respondent/s and against the applicant department. These reference applications stand disposed of in the above terms.

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[21] *M. Muslim vs. Commissioner of Income Tax 1980* reported as *1980 PTD 227*; *Iram Ghee Mills (Pvt.) Ltd vs. Customs, Central Excise, And Sales Tax (Appellate) Tribunal, Karachi* reported as *2004 PTD 559*; *Commissioner of Income Tax vs. Kamran Steel Re-rolling Mills* reported as *1989 PTD 521*; *Commissioner of Income Tax vs. Aasia Film Artist* reported as *2001 PTD 678*; *Commissioner Of Income-Tax/ Wealth Tax, Zone-B, Lahore vs. Makhdoom Zada Syed Hassan Mehmood* reported as *2002 PTD 381.*

[22] Of which the respondents are integral constituents.

[23] *Tianshi International Pakistan vs. CIR* reported as *2018 PTD 900*.

[24] *China Power Hub Generation Company (Private) Limited vs. Pakistan & Others (CP D 3532 of 2020)*; judgment dated 11.02.2021.

[25] *Multiline Associates vs. Ardeshir Cowasjee* reported as *1995 SCMR 362.*

14. A copy of this decision may be sent under the seal of this Court and the signature of the Registrar to the learned Appellate Tribunal Inland Revenue, as required per section 47(5) of the Sales Tax Act, 1990. The office is directed to place copies hereof in each of the connected references.

JUDGE

JUDGE

Schedule

SSTRA 130 of 2015 : Commissioner Inland Revenue Zone-IV vs. M/s. Byco Petroleum Pakistan Ltd	Spl:Sales Tax Ref: A. 741/2015 : Commissioner Inland Revenue Zone-IV vs. M/s. Byco Petroleum Pakistan Ltd
Spl:Sales Tax Ref: A. 108/2016 : Commissioner Inland Revenue Zone-IV vs. M/s. Byco Petroleum Pakistan Ltd.	Spl:Sales Tax Ref: A. 109/2016 : Commissioner Inland Revenue Zone-IV vs. M/s/. Byco Petroleum Pakistan Ltd.
Spl:Sales Tax Ref: A. 110/2016 : Commissioner Inland Revenue Zone-IV vs. M/s. Byco Petroleum Pakistan Ltd.	Spl:Sales Tax Ref: A. 111/2016 : Commissioner Inland Revenue Zone-IV vs. M/s. Byco Petroleum Pakistan Ltd.
Spl:Sales Tax Ref: A. 114/2016 : Commissioner Inland Revenue Zone-IV vs. M/s. Byco Oil Pakistan Ltd	Spl:Sales Tax Ref: A. 115/2016 : Commissioner Inland Revenue Zone-IV vs. M/s. Byco Oil Pakistan Ltd.
Spl:Sales Tax Ref: A. 116/2016 : Commissioner Inland Revenue Zone-IV vs. M/s. Byco Oil Pakistan Ltd.	Spl:Sales Tax Ref: A. 21/2016 : Commissioner IR Zone-IV vs. M/s. Byco Petroleum Pakistan Ltd.
Spl:Sales Tax Ref: A. 22/2016 : Commissioner IR Zone-IV vs. M/s. Byco Petroleum Pakistan Ltd	Spl:Sales Tax Ref: A. 78/2016 : Commissioner Inland Revenue Zone-IV vs. M/s. Byco Oil Pakistan Ltd.
Spl:Sales Tax Ref: A. 82/2016 : Commissioner Inland Revenue Zone-IV vs. M/s. Byco Oil Pakistan Ltd.	Spl:Sales Tax Ref: A. 84/2016 : Commissioner Inland Revenue Zone-IV vs. M/s. Byco Oil Pakistan Ltd.
Spl:Sales Tax Ref: A. 85/2016 : Commissioner Inland Revenue Zone-IV vs. M/s. Byco Oil Pakistan Ltd.	Spl:Sales Tax Ref: A. 192/2018 : Commissioner I-R Zone-IV vs. M/s. Byco Petroleum Pakistan Ltd.
Spl:Sales Tax Ref: A. 193/2018 : Commissioner I-R Zone-IV vs. M/s. Byco Oil Pakistan Ltd.	Spl:Sales Tax Ref: A. 194/2018 : Commissioner I-R Zone-IV vs. M/s. Byco Petroleum Pakistan Ltd.
Spl:Sales Tax Ref: A. 195/2018 Commissioner I-R Zone-IV vs. M/s. Byco OPetroleum Pakistan Ltd.	Spl:Sales Tax Ref: A. 196/2018 : Commissioner I-R Zone-IV vs. M/s. Byco Petroleum Pakistan Ltd.
Spl:Sales Tax Ref: A. 199/2018 : Commissioner I-R Zone-IV vs. M/s. Byco Oil Pakistan Ltd.	Spl:Sales Tax Ref: A. 200/2018 : Commissioner I-R Zone-IV vs. M/s. Byco Oil Pakistan Ltd.
Spl:Sales Tax Ref: A. 201/2018 : Commissioner I-R Zone-IV vs. M/s. Byco Petroleum Pakistan Ltd.	Spl:Sales Tax Ref: A. 202/2018 : Commissioner I-R Zone-IV vs. M/s. Byco Petroleum Pakistan Ltd.
Spl:Sales Tax Ref: A. 203/2018 : Commissioner I-R Zone-IV vs. M/s. Byco Petroleum Pakistan Ltd.	Spl:Sales Tax Ref: A. 204/2018 : Commissioner I-R Zone-IV vs.M/s. Byco Petroleum Pakistan Ltd.
Spl:Sales Tax Ref: A. 205/2018 : Commissioner I-R Zone-IV vs. M/s. Byco Petroleum Pakistan Ltd.	Spl:Sales Tax Ref: A. 206/2018 : Commissioner I-R Zone-IV vs. M/s. Byco Petroleum Pakistan Ltd.
Spl:Sales Tax Ref: A. 207/2018 : Commissioner I-R Zone-IV vs. M/s. Byco Petroleum Pakistan Ltd.	Spl:Sales Tax Ref: A. 208/2018 : Commissioner I-R Zone-IV vs. M/s. Byco Petroleum Pakistan Ltd.
Spl:Sales Tax Ref: A. 209/2018: Commissioner I-R Zone-IV vs. M/s. Byco Petroleum Pakistan Ltd.	Spl:Sales Tax Ref: A. 210/2018 : Commissioner I-R Zone-IV vs. M/s. Byco Petroleum Pakistan Ltd.
Spl:Sales Tax Ref: A. 211/2018 : Commissioner I-R Zone-IV vs. M/s. Byco Petroleum Pakistan Ltd.	Spl:Sales Tax Ref: A. 212/2018: Commissioner I-R Zone-IV vs. M/s. Byco Petroleum Pakistan Ltd.
Spl:Sales Tax Ref: A. 272/2018: Commissioner I-R Zone-IV vs. M/s. Byco Petroleum Pakistan Limited	Spl:Sales Tax Ref: A. 273/2018 : Commissioner I-R Zone-IV vs. M/s. Byco Petroleum Pakistan Limited
Spl:Sales Tax Ref: A. 274/2018 : Commissioner I-R Zone-IV vs. M/s. Byco Petroleum Pakistan Limited	Spl:Sales Tax Ref: A. 278/2018 : Commissioner I-R Zone-IV vs. M/s. Byco Petroleum Pakistan Limited
Spl:Sales Tax Ref: A. 719/2019 : Commissioner I-R Zone-IV vs. M/s. Byco Petroleum Pakistan Ltd.	Spl:Sales Tax Ref: A. 720/2019 : Commissioner I-R Zone-IV vs. M/s. Byco Petroleum Pakistan Ltd.
Spl:Sales Tax Ref: A. 721/2019 : Commissioner I-R Zone-IV vs. M/s. Byco Petroleum Pakistan Ltd.	Spl:Sales Tax Ref: A. 722/2019 : Commissioner I-R Zone-IV vs. M/s. Byco Petroleum Pakistan Ltd.
Spl:Sales Tax Ref: A. 723/2019 : Commissioner I-R Zone-IV vs. M/s. Byco Petroleum Pakistan Ltd.	Spl:Sales Tax Ref: A. 724/2019 : Commissioner I-R Zone-IV vs.M/s. Byco Petroleum Pakistan Ltd.
Spl:Sales Tax Ref: A. 725/2019 : Commissioner I-R Zone-IV vs.M/s. Byco Petroleum Pakistan Ltd.	Spl:Sales Tax Ref: A. 665/2020 : The Commissioner Inland Revenue Legal Zone vs. M/S Byco Petroleum Pakistan Ltd